

Criminal Procedure
Code.
Vol-2

1878

A handwritten signature in black ink, appearing to be 'Sms.' with a stylized flourish above the 's'.

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Section 5 of the Whipping Act (VI of 1864) provides, that any juvenile offender who commits an offence which is not by the Penal Code punishable with death, may, whether for a first or any other offence, be punished with whipping in lieu of any other punishment to which he may be for such offence liable under that Code. Ch. XXVIII
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By the term "juvenile offender," in s. 5 of the Whipping Act, is meant an offender under 16 years of age. — *Empress v. Din Ali*, I. L. R., 6 All., 482; see *Reg. v. Muhammad Ali*, 9 Bom. H. C. R., Cr., 9.

393. No sentence of whipping shall be executed by instalments; and none of the following persons shall be punishable with whipping (namely):—

Not to be executed
by instalments.
Exemptions.

- (a) females;
- (b) males sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years;
- (c) males whom the Court considers to be more than forty-five years of age.

Act X of 1872, s. 312, para. 3; Act IV of 1877, s. 190. Clauses (a) and (b) are taken from Act VI of 1864 (The Whipping Act). Clause (c) is new.

394. The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies, or, if there is not a medical officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Act X of 1872, s. 312, as amended by Act XI of 1874, s. 33; Act X of 1875, s. 108; Act IV of 1877, s. 189. See next section.

395. In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender, in lieu of whipping or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Procedure if punishment cannot be inflicted under section 394.

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Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

Act X of 1872, s. 313; Act X of 1875, s. 108; Act IV of 1877, s. 191. The former Code did not specify any term for which imprisonment might be awarded in lieu of whipping, or of so much of the sentence of whipping as was not carried out.

396. When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and if of imprisonment, penal servitude or transportation, shall take effect according to the following rules, that is to say :—

Execution of sentences on escaped convicts.

If the new sentence is severer in its quality than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

EXPLANATION.—For the purposes of this section—

(a) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment ;

(b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement ; and

(c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

As to the first paragraph, compare Act X of 1872, s. 316 ; see also Act X of 1875, s. 110 ; Act IV of 1877, s. 192. The rest of the section is new.

See s. 224 of the Penal Code as to punishments for escape or attempt to escape.

397. When a person already undergoing a sentence of imprisonment, penal servitude or transportation is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced :

Sentence on offender already sentenced for another offence.

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

Act X of 1872, s. 317; Act X of 1875, s. 111; Act IV of 1877, s. 193.

In a case of several offences under one section of the Penal Code, the proper way is to try the accused (under separate charges) for each of the several distinct offences under the section which have been clearly proved against him. On conviction on each of these separate charges, a separate sentence on each conviction should be passed with a direction under this section that such shall take effect on the expiry of the next prior sentence.—*Reg. v. Sobrai Gowallah*, 20 W. R., Cr., 70.

The section specifically fixes the time from which the subsequent sentence shall commence. Sentences of imprisonment in other cases ought to commence from the time of their being passed.—*In re Krishnanund Buttacharjee*, 3 B. L. R., Ap. Cr., 50.

When a prisoner has been committed to jail under two separate warrants, the sentence in the one to take effect from the expiry of the sentence in the other, the date of such second sentence shall, in the event of the first sentence being remitted on appeal, be presumed to take effect from the date on which he was committed to jail under the first or original sentence.—*C. O. No. 1, of 9th January 1882, Wilkins*, p. 120.

“398. (1.) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

“(2.) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or to a sentence of transportation or penal servitude for an offence punishable with imprisonment, and the person undergoing the sentence is after its execution to undergo a further substantive sentence or further substantive sentences of imprisonment, transportation or penal servitude, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.”—[Act X of 1886, s. 10.]

399. When any person under the age of sixteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the

Confinement of youthful offenders in reformatories.

Ch. XXVIII Local Government prescribes with regard to the discipline
s. 400 and training of persons confined therein.

All persons confined under this section shall be subject to the rules so prescribed.

Act X of 1872, s. 318; Act X of 1875, s. 112.

Whenever any youthful offender is sentenced to transportation or imprisonment, and is in the judgment of the Court by which he is sentenced (*a*) under the age of sixteen years and (*b*) a proper person to be an inmate of a Reformatory School, the Court may direct that, instead of undergoing his sentence, he shall be sent to a Reformatory School, and be there detained for a period which shall be not less than two years and not more than seven years, and which shall be in conformity with any rules made under section twenty-two and for the time being in force. The powers so conferred on the Court shall be exercised only by (*a*) the High Court, (*b*) the Court of Session, (*c*) a Magistrate of the first class, and (*d*) a Magistrate of Police or Presidency Magistrate in the towns of Calcutta, Madras, and Bombay.—*Act V of 1876, s. 7.*

Whenever any youthful offender under the age of sixteen years has been or shall be sentenced to imprisonment, the officer in charge of the jail in which such offender is confined may bring him before the Magistrate within whose jurisdiction such jail is situate; and the Magistrate, if he thinks the offender (*a*) under the age of sixteen years and (*b*) a proper person to be an inmate of a Reformatory School, may direct him to be sent to a Reformatory School, and to be there detained for a period which shall be not less than two and not more than seven years, and which shall be in conformity with any rules made under section twenty-two and for the time being in force. In this section "Magistrate" means, in the towns of Calcutta, Madras, and Bombay, a Magistrate of Police or Presidency Magistrate, and elsewhere a Magistrate of the first class.—*Ib., s. 8.*

Every youthful offender so directed by a Court or Magistrate to be sent to a Reformatory School shall be sent to such Reformatory School as the Local Government may from time to time appoint for the reception of youthful offenders so dealt with by such Court or Magistrate.—*Ib., s. 9.*

For the form of warrant for detention in Reformatory in force in Bengal, see *Calc. H. C. C. O. No. 6, of 29th June 1878, Wilkins, p. 76.*

The part of the Puna City Jail set apart for the confinement of juvenile offenders was declared to be a Reformatory under s. 318 of Act X of 1872.—*Bombay Gazette, 1873, p. 98.*

400. When a sentence has been fully executed, the officer
 Return of warrant on execution of sentence. executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

Act X of 1872, s. 305.

Return of warrants.—Every warrant should, after the execution of the sentence, be returned to the Court by which it was issued, with an endorsement certifying the manner in which such sentence has been carried into execution.

In the case of a sentence, both for corporal punishment and imprisonment, the execution of the former part of the sentence should be endorsed on the warrant at the time of inflicting the punishment; but as the warrant in this case cannot be considered to be completely executed until the prisoner has undergone the sentence of imprisonment passed upon him, the officer in charge of the jail should retain the warrant until the expiration of the term of imprisonment, or, if the prisoner dies during the course of such term, return it with an endorsement to this effect.—*Calc. H. C. C. O. No. 34, of 19th June 1804, Wilkins, p. 120.*

The following rules are in force in Bombay:—

On the receipt of a writ from the High Court, the date of receipt shall be at once endorsed thereon; and when the return is made, the reason shall be stated, and any delay that may have occurred beyond the period prescribed for the return.

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In the event of the absence of a Sessions Judge from a district where there is an Assistant Sessions Judge, the officer who, under the provisions of s. 35 of XIV of 1869, assumes charge of the District Court, shall take charge of the duties of the Sessions Judge, in so far that he shall transmit writs of the Court to the Magistrates, forward proceedings in cases called for by the Court, submit the usual criminal returns, and receive appeal, petitions, and writs in cases.—*Bombay Gazette*, 1879, pp. 471, 475.

CHAPTER XXIX.

SUSPENSIONS, REMISSIONS, AND COMMUTATIONS OF SENTENCES

401. When any person has been sentenced to punishment for an offence, the Governor-General in Council, or the Local Government, may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

• Whenever an application is made to the Governor-General in Council or the Local Government for the suspension or remission of a sentence, the Governor-General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion.

“If any condition on which a sentence has been suspended or remitted is, in the opinion of the Governor-General in Council, or of the Local Government, as the case may be, not fulfilled, the Governor-General in Council, or the Local Government, may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

“The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.”—[Act X of 1886, s. 11.]

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Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites or remissions of punishment.

As to the first paragraph, compare Act X of 1872, s. 322, para. 1, as amended by Act XI of 1874, s. 34, cl. 1. The second paragraph is new. The last corresponds with Act XI of 1874, s. 34, cl. 2.

Release-orders not to be telegraphed to jails.—Judicial officers are prohibited from sending by telegraph orders to officers in charge of jails for the release of prisoners in their custody.—*Calc. H. C. C. O. No. 27, of 20th July 1878, Wilkins, p. 122.*

402. The Governor - General in Council, or the Local Government, may, without the consent of the person sentenced, commute anyone of the following sentences for any other mentioned after it :—

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

Act X of 1872, s. 322; see also ss. 54 and 55 of the Penal Code. After the words 'rigorous imprisonment,' the words 'for a term not exceeding that to which he might have been sentenced' have been added; and after the words 'simple imprisonment,' the words 'for a like term' have been added. The reason for this alteration was that under s. 322 of Act X of 1872, it was supposed that the Government had the power to commute a sentence of transportation, for instance, to a sentence of imprisonment exceeding that for which the offender was liable under the law under which he was convicted.

The following rule is in force in the Punjab :—

When a Sessions Judge or Magistrate passing sentence sends up a case to Government for remission or commutation of punishment under s. 322 (402) of the Code of Criminal Procedure, he should submit the application with his proceedings through the Chief Court, otherwise the Court may hear in appeal a case in which Government has remitted or commuted the punishment without knowing of such remission or commutation.—*Smyth, p. 117.*

Under s. 23 of the Prisoners' Act, V of 1871, the Governor-General in Council may grant to any convict sentenced to be kept in penal servitude a license to be at large within British India or in such part thereof as in such license is expressed and upon such conditions as to the Governor-General in Council may seem fit. The Governor-General in Council may at any time revoke or alter such license. See ss. 24 and 25 of the same Act.

CHAPTER XXX.

OF PREVIOUS ACQUITTALS OR CONVICTIONS.

403. A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any

Person once convicted or acquitted not to be tried for same offence.

other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237. Ch. XXX
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A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, paragraph one.

A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

EXPLANATION.—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused, or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

Illustrations.

(a.) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(b.) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(c.) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(d.) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(e.) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph three of this section.

(f.) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(g.) A, B, and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B, and C may afterwards be charged with, and tried for, dacoity on the same facts. (See *Virankutti v. Chiyamu*, I. L. R., 7 Mad., 557.)

Act X of 1872, s. 460; Act X of 1875, s. 117; Act IV of 1877, s. 113. The acquittal or conviction, in order to amount to an effectual defence to the charge, must be by a Court of competent jurisdiction. See s. 203, *supra*.

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As to the explanation, see Act X of 1872, s. 147 (para. 2), s. 195 (explanations), s. 215 (expl. 2), and Act X of 1875, s. 14.

There appears to be a clerical error in illustration (a). The words 'upon the same facts' should be inserted after the word 'charged.'

Illustration (d) of the former Code has been omitted.

A Magistrate may dismiss a complaint if, after examining the complainant and considering the result of the investigation under s. 202, *supra*, there is in his judgment no sufficient ground for proceeding (s. 203, *supra*), or, in inquiries into cases triable by Courts of Session or High Court, discharge an accused if, after taking evidence under s. 208, paras. 1 and 2, and examining the accused, he finds there are not sufficient grounds for committing him for trial.—S. 209.

Where a conviction has been had on one or more of several charges, the withdrawal of the remaining charges under s. 240 has the effect of an acquittal on such charges unless the conviction be set aside (s. 240). See *Luchi Behara v. Nityanund Dass*, 19 W. R., Cr., 55. Under s. 247, if a summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or on any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall acquit the accused unless he thinks proper to adjourn the case; and under s. 248, if a complainant at any time before a final order is passed in a summons-case satisfies the Magistrate that there are good grounds for withdrawing his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

In trials before a jury where the jury is discharged under s. 305, and the Judge does not consider the accused should be retried, he may make an entry to that effect, and such entry operates as an acquittal.—S. 308, *supra*.

Any public prosecutor appointed by the Governor-General in Council or the Local Government may, with the consent of the Court in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution, and upon such withdrawal, (a) if it is made before a charge has been framed, the accused shall be discharged, (b) if it is made after a charge has been framed or when under this Code no charge is required, he shall be acquitted.—S. 494, *post*.

As to the effect of the Advocate-General withdrawing from the prosecution, see s. 333, *supra*, and s. 146 of Act X of 1875, quoted at p. 176, *ante*. It is to be observed that s. 146 of Act X of 1875 has not, so far as it relates to informations by the Advocate-General, been repealed.—*Sched. I (b), post*.

The composition of an offence under s. 345 has the effect of an acquittal. A discharge under s. 253 does not amount to an acquittal. A dismissal of a complaint after a charge has been framed amounts to an acquittal (*In re Jadubar Mooharjee*, 5 C. L. R., 359); but where a charge has been drawn up, the Magistrate ought to record an acquittal (s. 220, *supra*). In the case of *Empress v. Gurdu*, 1 L. R., 3 All., 129, where a Magistrate tried and acquitted a person accused of theft without preparing in writing a charge against him, it was held by PEAKSON, J., that the omission did not invalidate the order of acquittal and render the order equivalent merely to an order of discharge.

To render a former acquittal or conviction a defence on a second trial, the offence must be the same.—*Queen v. Dwarhanath Dutt*, 7 W. R., Cr., 15; *Kaplan v. Smith*, 7 B. L. R., Appx., 25; (S. C.) 16 W. R., Cr., 3. See *Sarwar v. Empress*, Panjab Record, 1884, p. 52.

Where a prisoner is released by the Court of Sessions on the ground that the proceedings had in his case were illegal and irregular, there is no bar to his being subsequently tried and convicted of the same offence.—*Queen v. Wahed Ali*, 18 W. R., Cr., 42.

A Court before which a second trial is held has nothing to do with the evidence given in the former trial, except for the purpose of ascertaining whether the offence in the two trials is the same.—*Queen v. Dwarhanath Dutt*, 7 W. R., Cr., 15; *Queen v. Mussamat Itwaryn*, 22 W. R., Cr., 14.

A person who has been tried for the offence of assault under s. 352 of the Penal Code, and discharged, cannot again on the same complaint be tried for causing hurt.—*Kaplan v. Smith*, 7 B. L. R., Appx., 25; (S. C.) 16 W. R., Cr., 3; see *Queen v. Dwarhanath Dutt*, 7 W. R., Cr. Rul., 15.

The distinction between an acquittal and a discharge shown in ss. 215 and 2 [s. 255 (para. 1) and s. 255] holds good in all warrant-cases tried summarily, 1

only difference being that, under the ordinary procedure, the charge must be prepared in writing, and under summary procedure must be made verbally. A discharge in a summary trial no more bars the revival of a prosecution for the same offence than it does in a case conducted under the rules of ordinary procedure.—*Smyth*, p. 101.

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In the case of *Verankutti v. Chiyamu*, I. L. R., 7 Mad., 557, upon a charge of dacoity, the Magistrate having split up the charge, convicted the accused of rioting, using criminal force, and misappropriating the property of a deceased person. On appeal, the Sessions Court reversed the conviction, holding that the offence, if any, was dacoity. Thereupon a fresh complaint of dacoity was lodged, based upon the same fact, before another Magistrate. It was held, having regard to cl. 4 and illustration (g) to this section, that the judgment of the Sessions Court was a bar to further proceedings.

In a subsequent case, however, where E, being charged with theft and mischief in respect of certain branches of a tree, was tried by a Subordinate Magistrate on the charge of mischief, and acquitted on the ground that, as against the complainant, E had title to the tree, on the application of the complainant the District Magistrate directed further inquiry to be made, and on a reference to the Court of Session, the Sessions Judge held that, as no inquiry into the charge of theft had been had, the order was legal. The High Court held that the District Magistrate had no power to pass the order, and that a trial on the charge of theft was barred by this section of the Code.—*Empress v. Erramreddi*, I. L. R., 8 Mad., 296.

There can be no acquittal unless the Court before which the accused is tried has jurisdiction.—*Rami Reddi v. Sheshu Reddi*, I. L. R., 3 Mad., 48. Where an offence is tried without jurisdiction, the proceedings are void under s. 530, *post*, and the offender, if acquitted, is liable to be retried under this section. It is not necessary for the High Court to upset the acquittal before the re-trial can be had.—*Empress v. Hussein Garbu*, I. L. R., 8 Bom., 307. If the Court has jurisdiction, there can be no re-trial, unless the acquittal has been set aside by the High Court on appeal by the Local Government.—*Empress v. Gustadji Burjorji*, I. L. R., 10 Bom., 181.

PART VII.

OF APPEAL, REFERENCE, AND REVISION.

CHAPTER XXXI.

OF APPEALS.

404. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Unless otherwise provided, no appeal to lie.

Act X of 1872, s. 286, omitting the illustration. See also s. 282, para. 2, and Act IV of 1877, s. 180.

See s. 537, *infra*.

Limitation.—Under the Limitation Act, XV of 1877, an appeal from a sentence of death by a Sessions Judge must be presented within seven days from the date of the sentence (sched. ii, art. 150); from a judgment of acquittal, six months from the date of the judgment appealed against (sched. ii, art. 157). See *Empress v. Jyadullu*, I. L. R., 2 Cal., 436. An appeal to any other Court than a High Court must be presented within thirty days from the date of the sentence or order appealed against (sched. ii, art. 154); and, except in cases provided for by arts. 150 and 157, sixty days from the sentence or order appealed against. If the period of limitation prescribed for any appeal expires on a day when the Court is closed, it may be

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presented on the day that the Court re-opens. And any appeal may be admitted after the period of limitation expires, when the appellant satisfies the Court that he had sufficient cause for not presenting the appeal within such period.—*Act XV of 1877, s. 5.* In computing the period of limitation prescribed for an appeal, the day from which such period is to be reckoned, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the sentence or order appealed against are to be excluded.—*Ib., s. 12.*

The High Court cannot, in the exercise of its powers of extraordinary jurisdiction in criminal matters, interfere unless all other remedies provided by law have been previously exhausted. Thus, persons convicted by a Magistrate who have a right of appeal to the Sessions Court, cannot move the High Court under cl. 15 of the Charter without having first exercised that right of appeal.—*Per AINSLIE and McDONELL, JJ., Dhenonath Ghattack v. Rajcoomar Singh, I. L. R., 3 Calc., 573.* See also *In re Poona Churn Pal, I. L. R., 7 Calc., 447.*

In the High Court under the Letters Patent where two Judges sitting on appeal differ, the opinion of the Senior Judge must prevail under s. 36 of the Letters Patent.—*Queen v. Kazim Thakoor, 2 B. L. R. (F. B.), 25.*

The High Court has no power either by way of appeal or revision to interfere with a sentence passed by the Superintendent of Tributary Mehals when exercising jurisdiction over offences committed in Mohurbunj, a place not situated within the limits of British India.—*Empress v. Hurrokoile, I. L. R., 9 Calc., 288.* See *Empress v. Keshub Mahajan, I. L. R., 8 Calc., 985,* and *Hursee Mahapatro v. Dinubhundu Patro, I. L. R., 7 Calc., 523.* Section 27 of the Letters Patent makes the High Court a Court of Appeal from the Courts of the Revenue Division of the Presidency

See s. 419.

In cases in which the law allows no appeal, the High Court as a Court of Revision will not, except on very exceptional grounds, exercise the powers of an Appellate Court; but where such exceptional grounds exist, as where the conviction is not in any degree supported by the evidence, the High Court will exercise its discretion under s. 439, *infra*, and reverse the conviction and sentence.—*Empress v. Sheikh Saheb Badrudin, I. L. R., 8 Bom., 197.*

In the case of *Queen v. Chandra Jogi, 9 B. L. R., 6,* it was held that a Judge of the High Court sitting alone on the Appellate Side of the High Court had power to hear and dispose of appeals in criminal cases. See the question discussed in the case of *Abdul Sobhan, I. L. R., 8 Calc., 63, pp. 67—70.*

405. Any person whose application under section 89, for the delivery of property or the proceeds of the sale thereof has been rejected by any Court, may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

Appeal from order rejecting application for restoration of attached property.

This is new. See *In re Michell, 1 C. L. R., 339.*

Section 89, *supra*, deals with the restoration of attached property.

406. Any person required by a Magistrate other than the District Magistrate or a Presidency Magistrate to give security for good behaviour under section 118, may appeal to the District Magistrate.

Appeal from order requiring security for good behaviour.

Act X of 1872, s. 267.

No appeal lies from an order passed by a District Judge under s. 123, and, on reference by the Magistrate, confirmed by the Sessions Judge, requiring a person to be detained in prison until he should provide security for his good behaviour.—*Chand Khan v. Empress*, I. L. R., 9 Calc., 878. The order is not a conviction or a trial by a Sessions Judge (s. 410), nor a sentence of a Magistrate subject to the confirmation of the Sessions Judge [s. 408 (e)].

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s. 407

407. Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 by a Subdivisional Magistrate of the second class, may appeal to the District Magistrate.

Appeal from sentence of Magistrate of the second or third class.

The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals, and thereupon such appeal or class of appeals shall be presented to such Subordinate Magistrate, or, if already presented to the District Magistrate, shall be transferred to such Subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

*The first paragraph of this section corresponds with s. 266 of Act X of 1872, omitting the words 'competent Magistrate of the second class' and substituting for them 'Subdivisional Magistrate of the second class'; and omitting the words 'or to a Magistrate of the first class who has been empowered by the Local Government to hear such appeals.' The second paragraph gives the District Magistrate more extensive powers as to transfer of appeals than were contained in s. 47, para. 2, of Act X of 1872.

If any Magistrate not being empowered in this behalf decides an appeal, his proceedings shall be void.—*Section 530 (f), infra.*

Magistrates of the first class in charge of divisions of districts in the Province of Sind were invested with powers to hear appeals from convictions by Magistrates of the second and third classes (s. 266) in their respective divisions, subject to such exceptions as might be made and notified in particular cases.—*Bombay Gazette*, 1873, p. 265.

Section 349 is as follows :—Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under s. 106, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Subdivisional Magistrate to whom he is subordinate.

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence; and shall pass such judgment, sentence, or order in the case as he thinks fit, and as is according to law: Provided that he shall not inflict a punishment more severe than he is empowered to inflict under ss. 32 and 33.

A person against whom an order awarding compensation has been passed under s. 22 of the Cattle Trespass Act (I of 1871) is not a "person convicted on a trial," and no appeal therefore lies under this section.—*Empress v. Raja Lakhma*, I. L. R., 10 Bom., 230.

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No appeal lies to a District Magistrate from the decision of an Assistant Magistrate with second class powers and two or more Honorary Magistrates in a case tried summarily, for any Bench of two or more Honorary Magistrates sitting with a salaried Magistrate exercising not less than second class powers is vested with first class powers.—Government Order, para. 1, *Calcutta Gazette*, 1873, p. 17, and Government Orders, dated 31st March 1882. See *In re Havaldar Roy*, I. L. R., 9 Calc., 96; (S. C.) 11 C. L. R., 423, and s. 273, *ante*.

An appeal lies under this section from a conviction by a Bench of Magistrates invested with second or third class powers.—*Empress v. Narayanasami*, I. L. R., 9 Mad., 36. See s. 414, *post*.

408. Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the first class, or any person sentenced under section 349 by a Magistrate of the first class, may appeal to the Court of Session :

Provided as follows :—

(a) when in any case an Assistant Sessions Judge or a District Magistrate passes any sentence which is subject to the confirmation of the Court of Session, every appeal in such case shall lie to the High Court, but shall not be presented until the case has been disposed of by the Court of Session ;

(b) any European British subject so convicted may at his option appeal either to the High Court or the Court of Session.

As to the first paragraph, compare Act X of 1872, s. 269 (para. 1), and s. 270 (para. 2); as to the second paragraph, see Act X of 1872, s. 270, paras. 1 and 3; and as to the last paragraph, Act X of 1872, s. 79.

"District Magistrate" includes a District Magistrate invested with powers under s. 30, *ante*.—*Per FIELD, J., Rongai v. Empress*, I. L. R., 9 Calc., 513, p. 516; (S. C.) 12 C. L. R., 500.

In the case of *Empress v. Nadua*, I. L. R., 2 All., 53, STUART, C. J., however, doubted whether, where a person had been convicted by a Deputy Commissioner invested with powers under s. 36 of Act X of 1872, and sentenced to a term of imprisonment requiring under that section to be confirmed by the Sessions Judge to whom such Deputy Commissioner was subordinate, and such sentence had been confirmed accordingly, an appeal lay to the High Court against such conviction and sentence. See *Rongai v. Empress*, I. L. R., 9 Calc., 513; (S. C.) 12 C. L. R., 500.

No appeal lies to a District Magistrate from the decision of an Assistant Magistrate with second class powers and two or more Honorary Magistrates in a case tried summarily, for any Bench of two or more Honorary Magistrates sitting with a salaried Magistrate exercising not less than second class powers is vested with first class powers.—Government Order, para. 1, *Calcutta Gazette*, 1873, p. 17, and Government Orders, dated 31st March 1882. See *In re Havaldar Roy*, I. L. R., 9 Calc., 96; (S. C.) 11 C. L. R., 423, and s. 273, *ante*.

An appeal lies under this section from a conviction by a Bench of Magistrates invested with second or third class powers.—*Empress v. Narayanasami*, I. L. R., 9 Mad., 36. See s. 414, *post*.

An order under s. 123, *ante*, requiring a person to give security for good behaviour and directing him to be detained until such security has been given is not a conviction, and no appeal lies.—*Chand Khan v. Empress*, I. L. R., 9 Calc., 878.

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional or Joint Sessions Judge.

Appeals to Court of session how heard.

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This is new.

410. Any person convicted on a trial held by a Sessions Judge, or an Additional or a Joint Sessions Judge, may appeal to the High Court.

Appeal from sentence of Court of Session.

Compare Act X of 1872, ss. 80, 270 (para. 3), and s. 271, and Act XI of 1874, s. 22, cl. 1.

The aggregate of the sentences passed under s. 35 in a case of simultaneous conviction for several offences must be considered a single sentence for the purpose of confirmation or appeal.—*Reg. v. Rama Bhingowda*, 1. L. R., 1 Bom., 223. See also *In re Gulam Abbas*, 12 Bom., 147.

Where an Assistant Magistrate decided a case without examining the witnesses for the defence named by the prisoners, the Sessions Judge on appeal ordered the evidence of those witnesses to be taken by the Assistant Magistrate, and on the depositions being returned to him, proceeded to deal with the case, and confirmed the judgment and sentence passed by the Assistant Magistrate. It was held, that the judgment of the Sessions Judge (though in form confirming the Assistant Magistrate's judgment and sentence) was in substance an original judgment, and that an appeal lay from it to the High Court upon the merits.—*Queen v. Mohesh Chunder Chuttopadhia*, 2 W. R., Cr., 13. See *Queen v. Poorno Chunder Doss*, 8 W. R., Cr., 59.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

Appeal from sentence of Presidency Magistrate.

Act IV of 1877, s. 167, omitting the proviso which is incorporated in the next section.

The words 'to imprisonment for a term exceeding six months or to fine exceeding Rs. 200' are confined in their meaning to substantive sentences, and cannot be extended to include an award of imprisonment in default of payment of fine, the operation of which is contingent on the fine not being paid.—*In re Jotharam Davay*, 1. L. R., 2 Mad., 30.

412. Notwithstanding anything hereinbefore contained where an accused person has pleaded guilty and has been convicted by a Court of Session or a Presidency Magistrate on such plea, there shall be no appeal except as to the extent or legality of the sentence.

No appeal in certain cases when accused pleads guilty.

Act X of 1872, s. 273, last paragraph; Act IV of 1877, s. 167.

In the case of *Empress v. Jafar M. Talab*, 1. L. R., 5 Bom., 85, it was held, that where a person had, on his own plea, been convicted on a trial by a Presidency Magistrate, an appeal to the High Court, on the ground that the conviction was illegal, and therefore also the sentence, did not lie according to the provisions of

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s. 167 of Act IV, of 1877, albeit that the Magistrate had sentenced the person to imprisonment for a term exceeding six months or to a fine exceeding 200 rupees.

413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

EXPLANATION.—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has been passed.

Act X of 1872, s. 273, paras. 1 and 2, adding the words 'by a convicted person' after 'appeal' in para. 1.

Where several persons are tried together, and some of them are sentenced to undergo rigorous imprisonment for a month, and others for a greater period, a Sessions Judge has no power to deal in appeal with the cases of those sentenced to the less imprisonment. The test as to whether a case is appealable is not the maximum sentence passed in it.—*Reg. v. Kalubhai Meghabhai*, 7 Bom. H. C. R., Cr., 35. Where a person is charged with two separate offences in one trial, the amount of the whole punishment must be regarded as one sentence for the purpose of determining whether an appeal lies.—*Empress v. Haradhan Tamuli*, 3 C. L. R., 511.

European British Subjects.—See s. 416.

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

Compare Act X of 1872, s. 274, para. 1. The words 'by a convicted person' have been inserted after 'appeal.'

Section 260 applies only to District Magistrates, Magistrates of the first class, or a Bench having the powers of a Magistrate of the first class. Accordingly, an appeal lies under s. 407, *supra*, against a conviction by a Bench of Magistrates invested with second or third class powers.—*Empress v. Narayanasami*, I. L. R., 9 Mad., 36.

A Bench consisting of two or more Honorary Magistrates and a Stipendiary Magistrate with not less than second class powers is vested with first class powers. See *In re Havaladar Roy*, I. L. R., 9 Calc., 96; (S.C.) 11 C. L. R., 423.

European British Subjects.—See s. 416.

415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which would

Proviso to sections
413 and 414.

APPEAL IN CRIMINAL CASE—*Appealable sentence—Costs of complaint in Criminal Court, order on accused to pay—Fine—Court-fees Act (VII of 1870), s. 31—Criminal Procedure Code, 1882, s. 413.*
 An order passed by a Magistrate under section 31 of the Court-fees Act, directing an accused person to pay to the complainant the court-fee paid on the petition of complaint, is no part of the sentence so as to make it a sentence of fine within the terms of section 413 of the Code of Criminal Procedure, and an order therefore sentencing an accused person to 14 days' rigorous imprisonment and to pay the costs is not appealable. *Ex. R. 20 Cal 687.*

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not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace. Ch. XXXI
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EXPLANATION.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

Compare Act X of 1872, s. 274, para. 2, and Act XI of 1874, s. 24.

416. Nothing in sections 413 and 414 applies to appeals from sentences passed under Chapter XXXIII on European British subjects.

Saving of sentences on European British subjects.

Act X of 1872, s. 274, para. 3.

417. The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

Appeal on behalf of Government in case of acquittal.

Act X of 1872, s. 272, paras. 1 and 2, using the word 'order' instead of judgment; Act IV of 1877, s. 168, para. 1.

For definition of 'Public Prosecutor,' see s. 4 (m), *ante*, p. 6. Section 492 deals with the appointment of Public Prosecutor.

An appeal by the Local Government from a judgment of acquittal must be presented within six months from the date of the judgment appealed against.—*Limitation Act, XV of 1877, sched. ii, art. 157*. As to limitation, see further notes to s. 404, *ante*, p. 361, and *Reg. v. Jyadulla*, I. L. R., 2 Calc. (F. B.), 436.

The withdrawal of a complaint operates as an acquittal, and the High Court has no authority to entertain the matter at all, except upon an application duly made with the sanction of the Government.—*Luchi Behara v. Nityanund Doss*, 19 W. R., Cr., 55.

The words 'appellate judgment of acquittal' were held under Act X of 1872 to include all judgments of an Appellate Court by which a conviction is set aside.—*Government of Bengal v. Gohool Chunder Chowdhry*, 24 W. R., Cr., 41.

A judgment passed by a Court of Session following the verdict of a jury acquitting the prisoner was held, under s. 272 of Act X of 1872, to be a judgment of acquittal within the meaning of that section, although the Judge disagreed with the verdict.—*Empress v. Judoonath Gangooly*, I. L. R., 2 Calc., 273. In that case the jury, on a charge of murder, had found the accused not guilty of the charge, but convicted him of culpable homicide not amounting to murder. The Local Government directed an appeal, which was allowed.

The High Court has power under s. 427, *infra*, on an appeal under this section to order the accused to be arrested pending the appeal.—*Reg. v. Gobin Tewari*, I. L. R., 1 Calc., 281.

No appeal, it has been held, at the instance of the Local Government lies from an order of acquittal in a case which has been held by a jury, when the questions involved are purely questions of fact; for such an appeal to lie it must be supported upon a ground which is covered by s. 418.—*Govt. of Bengal v. Parmeshur Mullick*, I. L. R., 10 Calc., 1029.

In the case of *Emp. v. Ala Bukhsh*, I. L. R., 6 All., 484, it was said that while it was not an inflexible rule that where either Government on the one side, or an accused on the other, has a right of appeal, and does not exercise it, the powers of

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the High Court under s. 439, *post*, cannot be exercised, yet in such cases these powers should be sparingly used, and, save in very exceptional circumstances, not at all in reference to questions of fact. See *Empress v. Lalji*, Panjab Record, 1883, p. 41. It is, however, the general rule of the Calcutta High Court not to interfere in revision, under s. 439, with an acquittal.—*In re Municipal Committee of Dacca v. Hingnoo Ray*, I. L. R., 8 Calc., 895.

Where the Government appeals and asks for a conviction, it is for them to begin and to satisfy the Court that there is a case calling upon the prisoner for an answer.—*Reg. v. Ram Churn Ghose*, 20 W. R., Cr., 33.

As to when the High Court will interfere on an appeal by the Local Government, see *Empress v. Gayadin*, I. L. R., 4 All., 148; *Empress v. Uttam*, Panjab Record, 1885, p. 66.

Where, on the appeal of the Government, an order of acquittal is set aside and sentence passed, that sentence will commence to run from the date of the committal of the accused to jail, and not from the date of the arrest or of the sentence on appeal.—*Empress v. Mohaddi*, 6 C. L. R., 349.

The only course to be pursued, where it is sought to set aside an order of discharge made by a Presidency Magistrate, it was held under s. 168 of Act IV of 1877, is that laid down in that section, and as by that section there was no appeal allowed to a complainant who is a private individual, it is not open to him, by invoking the aid of the High Court under s. 15 of the Charter, to obtain under the Court's extraordinary powers that which he might obtain had he a right of appeal.—*In re Poona Churn Pal*, I. L. R., 7 Calc., 447. See *Dhenonath Ghattack v. Rajcoomar Singh*, I. L. R., 3 Calc., 573.

When Government desires to consider the propriety of making an appeal under s. 272 (417) of the Criminal Procedure Code, it is ordinarily sufficient that the Public Prosecutor or other officer appointed by Government should have an opportunity of taking copies of the record. But in exceptional case in which Government may consider it essential to see any original documents, such documents may be given into the possession of the officer appointed by Government to receive them, under such precautions for securing their integrity and safe return as to the Court may seem necessary.—*Bombay Gazette*, 1879, pp. 471, 473.

The Panjab Government has issued the following Circular No. 37-1142, dated 16th December 1884:—

The Lieutenant-Governor will not exercise the right of appeal under s. 417 of the Criminal Procedure Code at all in unimportant cases. In cases that are important, it must be most sparingly exercised, and only when (1) there is a very high probability that the appeal will result in a conviction; (2) there are special circumstances in the case which call for the right. These are—

- (a) a gross miscarriage of justice resulting in the acquittal, or
- (b) the production of fresh and credible evidence after the acquittal, or
- (c) other reasons rendering an appeal necessary in the interests of justice and of the public.—Panjab Record, 1884, Government Orders, p. 77.

418. An appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

EXPLANATION.—The alleged severity of a sentence shall for the purposes of this section be deemed to be a matter of law.

Act X of 1872, s. 271, para. 2, as amended by Act XI of 1874, para. 22. Compare Act X of 1877, s. 541.

In a case where the accused in a trial by a jury was convicted of an offence triable by assessors, MACLEAN, J., expressed an opinion that an accused person who would have been entitled to an appeal on the facts of the case, had he been tried with the aid of assessors, was not debarred from that right merely by the fact

the trial by jury was not invalid.—*Empress v. Mohim Chunder Rqi*, I. L. R., Ch. XXXI, 3 Calc., 765.

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The opinion expressed by MACLEAN, J., seems to be an expansion of the section which gives an appeal on matters of law only, where the trial was by jury. Section 536 provides that if an offence triable with the aid of assessors is tried by a jury, the trial shall not, on that ground only, be invalid, and if an offence triable by a jury is tried with the aid of assessors, the trial shall not, on that ground only, be invalid, unless the objection is taken before the Court records its finding.

In the case of *Bhootnath Dey*, 4 C. L. R., 405, in a trial by jury before a Court of Sessions upon charges, some of which were triable by a jury and some with the aid of assessors, the jury by a majority of four to one returned a verdict of "not guilty" on all the charges. The Judge disagreed with the jury, and directed that the accused should be kept in custody, pending a reference to the High Court. Subsequently the Judge called upon the pleaders of the accused to show cause why the accused should not be punished, the trial being treated as having been held with the aid of assessors. No cause having been shown, the Judge recorded his judgment, treating the trial as a trial with the aid of assessors, and concurring with the juror constituting the minority, he sentenced them to various periods of imprisonment. It was held, that the Judge was not competent to treat the trial as a trial with the aid of assessors and to act as he had done.

Chapter XXIII, *supra*, provides as to what offences shall be tried by jury and what offences with the aid of assessors. Where a Judge, disagreeing with the verdict of a jury, submits the case to the High Court, that Court is empowered to exercise any of the powers which it may exercise on an appeal, and may therefore consider the facts. So, under s. 376, the High Court may go into the facts upon a case of sentence of death submitted under s. 374 for confirmation.—*Reg. v. Jaffir Ali*, 19 W. R., Cr., 57; *Queen v. Kooryo Leth*, 11 B. L. R., 19. See notes to s. 376, *supra*.

The High Court on a point of law, as to the admissibility of rejected evidence reserved under cl. 25 of the Letters Patent, 1865, and s. 101 of Act X of 1875, had power, it was held, to review the whole case, and determine whether the admission of the rejected evidence would have affected the result of the trial, and a conviction should not be reversed unless the admission of the rejected evidence ought to have varied the result of the trial.—*Imperatrix v. Pitamber Jina*, I. L. R., 2 Bom., 61. See also *Queen v. Horribile Chunder Ghose*, I. L. R., 1 Calc., 207; *Reg. v. Navroji*, 9 Bomb. H. C. R., 355.

In *Gogun Chunder Ghose v. Empress*, I. L. R., 6 Calc., 247; (S. C.) 7 C. L. R., 74, where it was held that evidence had been improperly admitted in a trial by a jury, the High Court proceeded to consider the evidence in the case and ultimately arrived at the conclusion, that, independently of the evidence so improperly admitted, there was not sufficient evidence of guilt.

Where a Court has omitted to consider, or has given an erroneous or improper reason for disbelieving or setting aside as of no value relevant evidence upon the essential question in a case, the omission or error is a matter of law.—*Hurroperashad Roy Chowdhry v. Umata Dabi*, 8 C. L. R., 449; (S. C.) I. L. R., 7 Calc., 263. That was a civil case, but the *ratio decidendi* applies equally in criminal cases.

This section applies also to appeals by the Local Government against acquittal.—*Government of Bengal v. Parmeshur Mullick*, I. L. R., 10 Calc., 1029.

In a case tried by jury, unless the parties who appeal point out in what respect the law has been contravened, the appeal should be rejected.—*Queen v. Gopal Bhareewalla*, 1 W. R., Cr., 21.

After the appeal has been admitted and comes on for hearing, the rule, in Bengal at least, appears to be different. WHITE, J., in dealing with the duty of a Court trying a criminal appeal, said: The sound rule to apply in trying a criminal appeal where questions of disputed fact are in issue, is to consider whether the conviction is right, and in this respect a criminal appeal differs from a civil one. There the Court must be convinced, before reversing a finding of fact by a lower Court, that the finding is wrong.—*Protap Chunder Mookerjee v. Empress*, 11 C. L. R., 25. But, see, *Empress v. Sajiwan Lal*, I. L. R., 5 All., 386, per OLDFIELD, J.

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419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

Act X of 1872, s. 275; Act IV of 1877, s. 169.

The procedure where the appellant is in jail is provided for by the next section. In exercise of the power conferred by s. 35 of the Court-Fees Act (VII of 1870), the Governor-General in Council has been pleased to remit the fees leviable on copies of judgments or orders passed by a Criminal Court, and of a Judge's charge to the jury furnished to any person affected by such judgment or order, provided that such person is in jail, or the Court for some special reason sees fit to grant such copy free of expense.—*Notification, Government of India, No. 996 of 6th June 1873, Wilkins, p. 107.*

A petition of appeal, it was held in Madras, in a criminal case may be presented by any person authorized by the appellant to present it, whether an authorized pleader or not.—*In re Subba Aitala, 1 L. R., 1 Mad., 304, Weir, p. 3.*

sented by the convicted person, or by his attorney to present it on behalf of the convicted person.—*p. 146, Smyth, p. 102.*

In a case tried by a jury, unless the parties who appeal point out in what respect the law has been contravened, the appeal should be rejected.—*Queen v. Gopal Bhareewalla, 1 W. R., Cr., 21.*

In transmitting to the High Court copies of proceedings on appeals, Sessions Judges and Magistrates were directed by the Madras High Court to see that the proceedings were accompanied by copies of the judgment or order appealed against.—*Mad. H. C. Pro., 10th April 1875, Weir, p. 3.*

An English translation of the whole of the evidence given at the time should also be transmitted.—*Mad. H. C. Pro., 6th and 13th August 1862, Weir, p. 33.*

Prisoners applying for copies required for the purposes of appeal should invariably be furnished with a copy of the judgment or order appealed against, and not merely with a copy of the sentence.—*Mad. H. C. Pro., 21st December 1874, Weir, p. 9.*

Limitation.—See note to s. 404, *supra*, and *Emp. v. Lingya, 1 L. R., 9 Mad., 259.*

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

Act X of 1872, s. 277; Act IV of 1877, s. 171.

The officer in charge of the jail should give prisoners every facility to enable them to prepare their petitions of appeal.—*Nitto Gopal Palit, Petitioner, 13 W. R., Cr., 69.*

In computing the period of limitation prescribed for an appeal from a sentence of a Criminal Court, by art. 154, Sched. II, of the Limitation Act, XV of 1877, the time taken in forwarding an application by a prisoner for a copy of the judgment, and in transmitting the same from the Court to the jail, must be excluded. In the case of appeals by prisoners in jail, presentation of the petition of appeal to the officer in charge of the jail is, for the purpose of the Limitation Act, equivalent to presentation to the Court.—*Emp. v. Lingya, 1 L. R., 9 Mad., 259.*

Petitions of appeal to be sent direct to High Court.—Petitions of appeal against the sentences or orders of Sessions Judges, presented to officers in charge of jails, shall be forwarded by such officers direct to the Registrar of the High Court of Judicature, intimation of the fact being at once given in each instance, and in the following form, to the Judge whose sentence or order is appealed against:—

To

THE SESSIONS JUDGE OF

The undersigned begs to report, for the information of the Sessions Judge, that an appeal by the prisoner against the Judge's sentence or order, dated _____ and noted at foot, has this day been presented to the officer in charge of the jail, and has been forwarded to the High Court, as required by s. 277 of the Code of Criminal Procedure.—*Calc. H. C. C. O. No. 9 of 7th August 1867, Wilkins, p. 121.*

As to records of appealed cases to be forwarded, see *Calc. H. C. C. O. No. 5 of 28th May 1868, Wilkins, p. 122.*

The following rules are in force in the Panjab:—

Every petition of appeal should be accompanied by a copy of the judgment or order appealed against; and, if the person appealing is in jail, the copy should be furnished free of expense.

Along with the petition of appeal and copy of the judgment, the Deputy Commissioner should forward to the Appellate Court the file of the case, so that the appeal may be disposed of with as little delay as possible.

When the appeal lies to the Chief Court, the Deputy Commissioner should forward the file in his office through the Commissioner, so that the files for the Sessions Court and of the committing Magistrate may be transmitted together to the Chief Court.

If the appeal is preferred by a person convicted on a trial held by a Deputy Commissioner invested with powers under s. 36, the petition of appeal accompanied by the necessary copy and the record of the case may be forwarded direct to the Chief Court, if the sentence is appealable to that Court.

In both cases the file should be sent with an English docket.—*Smyth, p. 103.*

Procedure by Officer of the Jail and Sessions Judge on appeal being made to the High Court.—Every officer in charge of a jail, on receiving, under s. 277 (420) of the Code of Criminal Procedure, a petition of appeal to the High Court against a sentence or order of a Sessions Judge, shall at once intimate the fact to such Sessions Judge, and at the same time inform him whether the petition of appeal is accompanied by a copy in English of the Sessions Judge's judgment or charge to the jury. If the petition of appeal be not accompanied by such copy, the Sessions Judge shall at once forward to the High Court a certified copy of the judgment recorded in the case; and, if subsequently the case is called for by the High Court, no second copy need be made to accompany the fair copy of the Sessions Judge's proceedings.—*Bombay Gazette, 1879, pp. 471, 475.*

Petitions of appeal emanating from prisoners in jail should be countersigned by the Superintendent of the Jail.—*Mad. H. C. Pro., 9th August 1864, Weir, p. 2.*

421. On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may reject the appeal summarily: Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

Before rejecting an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

Compare Act X of 1872, s. 278, paras. 1 and 2, and Act IV of 1877, s. 172, omitting last sentence. The proviso is new.

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A petition for appeal presented for admission may be withdrawn.—*In re Chunder Nath Deb*, 5 C. L. R., 372. See *In re Dwarka Manjee*, 6 C. L. R., 427.

Reasonable opportunity.—A general notice posted in a Sessions Courthouse that appeals would be heard for admission only on the first Court-day after the presentation of the appeal was held not to give a reasonable opportunity.—*Malan v. Queen*, 1 L. R., 5 Mad., 11. The fact that the pleader of the accused is present in Court when an order is made admitting an appeal, does not relieve the Court from the necessity of giving notice to the appellant of the day fixed for the hearing of the appeal.—*In re Gopal Chunder Mundle*, 10 C. L. R., 57.

The sound rule, it was said by WHITE, J., in trying a criminal appeal where questions of fact are in issue, is to consider whether the conviction is right, and in this respect a criminal appeal differs from a civil one. In the latter case, the Court must be convinced, before reversing a finding of fact by a lower Court, that the finding is wrong.—*Protal Chunder Mukerjee v. Empress*, 11 C. L. R., 25. See, *contra*, *Empress v. Sajiwan Lal*, 1 L. R., 5 All., 386, *per* OLDFIELD, J.

The following rule is in force in Bombay :—

In order to carry out the provisions of s. 278 (421) of the Code of Criminal Procedure, which requires that an appellant shall have an opportunity of being heard before his petition of appeal is rejected, there shall be posted up in the Appellate Court, in a place accessible to the public, notice of the day appointed for considering the petition of appeal.—*Bombay Gazette*, 1879, pp. 471, 475.

For rules as to the time within which appeals are to be heard in the Chief Court of the Panjab, see *Panjab Gazette*, 1877, Part III, p. 579.

An order under s. 278 of Act X of 1872 by the Appellate Court, rejecting an appeal on perusal of the petition of appeal and the copy of the judgment or order appealed against, and without calling for the record and proceedings of the case, was held to be a final order within the scope of s. 285 (s. 430, *infra*), and not subject to revision.—*Empress v. Mahomed Yashin*, 1 L. R., 4 Bom., 101. See notes to s. 430, *infra*.

The judgment of an Appellate Court rejecting an appeal under this section should show clearly that the judgment appealed against has been perused and the appellant allowed an opportunity of being heard.—*Mad. H. C. Pro.*, 11th December 1874, *Weir*, p. 18.

An appellant in a criminal case has a right to appear and be heard by a mukhtear.—*Empress v. Shiram Gundo*, 1 L. R., 6 Bom., 14; see *Reg. v. Bechar Pitambar*, Bom. Cr. Rul., 22nd February 1870; *Empress v. Samaldas Bechar Lal*, *ib.*, 13th January 1881 (unreported); *In re Subba Aitula*, 1 L. R., 1 Mad., 304.

422. If the Appellate Court does not reject the appeal

summarily, it shall cause notice to be given to the appellant or his pleader and to such officer as the Local Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal ;

and, in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

Compare Act X of 1872, ss. 62, 269 (para. 2), and s. 279. See also Act IV of 1877, s. 173. As to the last paragraph, see Act XI of 1874, s. 27. Under s. 279 notice was to be given to the appellant only. Now the notice, it will be seen, may be given to the appellant or his pleader.

The fact that the pleader of the accused is present in Court when an order is made admitting an appeal, does not relieve the Court from the necessity of giving notice to the appellant of the day fixed for hearing.—*In re Gopal Chunder Mundle*, 10 C. L. R., 57.

The following rules are in force in Bombay :—

With reference to No. 49 of the Rules relating to the remuneration and duties of law officers: printed at pp. 743 to 751 of the *Government Gazette* for 1878,

Part I, the High Court considers that, when, on the day fixed for hearing a criminal appeal, the appellant is represented by counsel, the Sessions Judge should adjourn the hearing of the appeal if he considers that sufficient notice has not been given to the Government Pleader to enable him to prepare himself in the case. Intimation that this will be the practice of the Court should be given to the pleaders.—*Bombay Gazette*, 7th May, 1881. Ch. XXXI
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Notice of the day appointed for hearing appeals in criminal cases should be posted up in the Courts (*Bombay H. C. Cir.*, 62; *Bombay Gazette*, 1879, pp. 471, 475); but a general notice posted up in the Sessions Court-house that appeals would be heard for admission only on the first Court-day after the presentation of the appeal, was held not to give the appellant a reasonable opportunity of being heard in support of his appeal under s. 421.—*Mulan v. Queen*, 1. L. R., 5 Mad., 11. See note to s. 421, *supra*.

423. The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 417, the accused, if he appears, the Court may, if it considers there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court, or committed for trial, or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence, or (3) with or without such reduction, and with or without altering the finding, alter the nature of the sentence, but not so as to enhance the same;

(c) in an appeal from any other order, alter or reverse such order;

(d) Nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

Compare Act X of 1872, s. 272 (para. 3), and s. 280; see also Act IV of 1877, ss. 174, 179. As to the first part of cl. (b), compare Act X of 1872, s. 284, and as to cl. (d), see Act X of 1872, ss. 271 and 299, para. 3.

It is only s. 417 which provides for appeals against orders of acquittal, and that section requires that such an appeal should be (1) directed by Government, and (2) presented to the High Court. Accordingly cl. (a) of this section can only apply to the High Court. See *Rangasami v. Narisimhulu*, 1. L. R., 7 Mad., 215, p. 214.

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The power of enhancing sentences on appeal, it will be seen, has been taken away from the Appellate Court. But the High Court may, on revision, enhance a sentence, so as to alter its nature.—*Empress v. Ram Kuria*, I. L. R., 6 All. (F. B.), 622. In the case of *Mehter Ali v. Empress*, I. L. R., 11 Calc., 530, the High Court of Calcutta, in dismissing an appeal, directed, as a Court of revision, that the sentence passed should be enhanced. See s. 439, *infra*. See also s. 537, *infra*.

A Sessions Judge on appeal can quash an illegal conviction by an Assistant Magistrate.—*Reg. v. Heramun Singh*, 8 W. R., Cr., 30.

As a Court of appeal, the High Court has full power to order a retrial in a case tried with assessors.—*Luchhy Narain Nagory, Petitioner*, 24 W. R., Cr., 24. So it was held under s. 280 of the former Code, as amended by s. 28 of Act XI of 1874, that it was competent to a Court of Session to order a retrial of a case which is before it on appeal.—*In re Sher Mahomed*, 2 C. L. R., 511.

When a Sessions Judge on appeal annuls the conviction of a Magistrate for want of jurisdiction, and omits to order a retrial at the time, under this section, he is not precluded from passing such an order subsequently. The order annulling the conviction in such a case does not amount to an acquittal. Where sanction is given for a prosecution for perjury and the case is tried by an incompetent Court, and the conviction quashed on appeal, a competent Court may re-try the prisoner upon the subsisting sanction without any order of the Appellate Court by whom the conviction is quashed.—*Rami Reddi v. Seshu Reddi*, I. L. R., 3 Mad., 48.

It is, however, a general rule of the Calcutta High Court not to interfere with an order of acquittal.—*In re Municipal Committee of Dacca v. Hingoo Raj*, I. L. R., 8 Calc., 895. The Chief Court of the Punjab has held that it has power to do so, and set aside an acquittal, on the ground that it was erroneous in law.—*Empress v. Lalji*, Panjab Record, 1883, p. 41.

In the case of *Empress v. Imdad Khan*, I. L. R., 8 All., 120, PETHERAM, C. J. (p. 139), said: "I have been pressed to alter the findings so as to convict Imdad Khan of some other offence under some other provision of law. For my part I have serious doubts as to whether I could alter the finding in any case in such a manner. It is, however, enough for me to say, that in my opinion such a course would not be right in the present case. If Imdad is guilty of some other offence, he may be charged and tried for it."

The High Court has no power under this section in affirming a conviction of rioting, assault, or other breach of the peace to add to that sentence an order requiring security to keep the peace.—*Jan Muhammad v. Empress*, Panjab Record, 1884, p. 38. Where a Magistrate has refused to take the defence of an accused, the proper order for the Appellate Court, when it does not consider it necessary to act under s. 428, *post*, is to annul the conviction and direct a new trial.—*Gohar v. Empress*, Panjab Record, 1884, p. 48.

The Appellate Court referred to in this section can, on an appeal from a conviction only, order an accused to be committed for trial when it considers that the accused is triable exclusively by the Court of Session.—*Queen-Empress v. Sukha*, I. L. R., 8 All., 14. The meaning of the words in cl. (b), "or order him to be tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial," is as follows: If in an appeal from a conviction the Appellate Court finds that the accused person, who was triable only by a Magistrate of the first class or by a Court of Session, has, by an oversight or under a misapprehension, been tried, convicted, and sentenced by a Magistrate of the second class, the Appellate Court may in that case reverse the finding and sentence, and order the accused to be re-tried by a Magistrate of the first class or by the Court of Session, and in like manner when the appellant who was triable solely by the Court of Session has been tried by a Magistrate of the first class, the Sessions Judge, in disposing of the appeal, is empowered to reverse the finding and sentence, and to order the accused to be committed for trial.—*Ib.*, per BROADHURST, J.

WHITE, J., in dealing with the duty of a Court trying a criminal appeal, said: The sound rule to apply in trying a criminal appeal where questions of disputed fact are in issue, is to consider whether the conviction is right, and in this respect a criminal appeal differs from a civil one. There the Court must be convinced, before reversing a finding of fact by a lower Court, that the finding is wrong.—*Prolap Chander Mookerjee v. Empress*, 11 C. L. R., 25. But see *Empress v. Sajiwan Lal*, I. L. R., 5 All., 386, per OLDFIELD, J.

CRIMINAL PROCEDURE CODE, ss. 423, 439—*Sessions Judge, powers of as a Court of appeal—Commitment.*] It is competent to a Sessions Judge acting as a Court of appeal under s. 423 of the Code of Criminal Procedure, 1882, having reversed the finding and sentence, to order the appellant to be committed for trial to the Court of Session. *Queen-Empress v. Sukha* overruled. *Q. R. 16211 203*

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CRIMINAL PROCEDURE CODE (ACT X OF 1882), SEC. 423, Cl. (b)—*Sentence—Alteration of sentence in appeal—Appellate Court's power to alter a sentence of fine into one of imprisonment.*] A Sessions Judge has no power to enhance a sentence in appeal, by altering a sentence of fine into one of imprisonment. *QUEEN-EMPRESS v. DÁNSANG DÁDA* ..

It is not competent to an Appellate Court to find a prisoner on appeal guilty of a graver offence than that with which he was charged at his trial, unless an opportunity is afforded to him of defending himself against the altered charge.—*In re Diwarka Manjee*, 6 C. L. R., 427. In this case the Court (TOTTENHAM and MACLEAN, JJ.) doubted whether a petition of appeal against a conviction could be withdrawn after the Appellate Court had perused the evidence. In the case of *Chunder Nath Deb*, 5 C. L. R., 372, it was held that a petition of appeal presented for admission might be withdrawn.

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The officer deciding an appeal shall, if he reverse or modify the finding of the lower Court or interfere with its sentence, record his reasons for so doing, a copy of which shall be transmitted to the Magistrate, whose decision was appealed against, or his successor in office. Except where the petition requires a stamp, it is not material whether the appeal of several convicted persons in the same case is made jointly in one petition or separately. Where a stamp is required, the petitions must be separate, and separately numbered, and be accompanied by separate copies of the judgment or order appealed against.—*Bombay Gazette*, 1879, pp. 471, 475.

424. The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court :

Judgments of subordinate Appellate Courts.

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

This section is new.

Section 367, *supra*, provides what a judgment must contain and specify. The following judgment of a Sessions Judge: "I have gone through the case, but I see no reason to interfere. The witnesses for the defence would not support the accused, and after the evidence of two was taken, the rest were withdrawn by the barrister of the accused," was held not to comply with the provisions of ss. 367 and 424. The case was returned to his Court in order that he might pass judgment according to law.—*Hakim Singh v. Empress*, Panjab Record, 1884, p. 54. See *Kamiruddin Dai v. Sonatun Mundul*, I. L. R., 11 Cal., 449.

425. Whenever a case is decided on appeal by the High Court under this chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

Order by High Court on appeal to be certified to lower Court.

The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court ; and, if necessary, the record shall be amended in accordance therewith.

Compare Act X of 1872, s. 299, paras. 1 and 2.

The following rules as to orders passed in Criminal Appeals have been in force in the Panjab :—

1. The Chief Court will certify its decision to the Court from whose judgment the petition of appeal or revision was preferred : Provided that if such judgment

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s. 425 the Chief Court will be certified to the Magistrate of the District.

2. The Court to whom the decision is certified will, in case of rejection of appeal or confirmation of sentence, cause the appellant to be informed, and in case of alteration, reversal or enhancement of sentence, shall issue a warrant accordingly to the officer in charge of the district in which the trial was held.

If the original sentence was one of fine only, such warrant shall be addressed to the person to whom the original warrant was addressed.

3. The Sessions Court will in all cases certify its decision passed in appeal to the Magistrate of the District in which the trial was held, with whom it rests to issue information or warrant, as the case may be, in the manner described in para. 2.

4. The Magistrate of the District will himself issue information in the mode prescribed in para. 2, in pursuance of all orders passed by his own Court on appeal.

5. The Magistrate of the District will, in communication with the Superintendent of the Prison, arrange that no prisoner is removed from the jail in which the prisoner has been confined by order of the Court sentencing him to imprisonment until the period of appeal has expired, or if at that time an appeal is pending, until the decision of the Appellate Court is known.

6. If, for any reason, an exception has been made to the above rule, and a prisoner has been transferred before the order of the Appellate Court is known, it will rest with the Superintendent of the Jail of sentence to forward the information or warrant of the order of the Appellate Court to the Superintendent of the Jail to which the prisoner has been transferred, and the latter officer having executed his order, will report execution to the Court issuing the information or warrant.—*Punjab Gazette*, 1874, p. 146.

The following rules have been framed in Bombay to provide for the due certifying and execution of orders of Courts of appeal, reference, or revision:—

(i.) When a sentence on a prisoner is reversed or modified on appeal, a fresh warrant will be issued by the Appellate Court to the officer in charge of the jail for execution, and its order will be communicated to the lower Court for record.

(ii.) When an appeal is rejected, or a sentence confirmed, an intimation to that effect will be sent to the officer in charge of the jail by the Appellate Court, and its order will be communicated to the lower Court for record.

(iii.) When a case is revised by the High Court, the Court or Magistrate to which the High Court certifies its order under s. 299 (425) of the Code of Criminal Procedure will proceed under that section to issue a fresh warrant or order to the jailor.

(iv.) When a prisoner has applied to the High Court in revision to have the sentence passed on him revised, and the High Court rejects the application, intimation to that effect will be made direct to the Superintendent of the Jail.

(v.) In cases referred by the Court of Session for the confirmation of a sentence of death by the High Court, the High Court will send a copy of its order to the Court of Session, which will then issue warrants to the officer in charge of the jail, as provided in s. 301 (381) of the Code of Criminal Procedure.

(vi.) In all cases in which a sentence or order is modified or reversed, whether in appeal or revision, a separate warrant should be issued as regards each prisoner whose sentence has been so modified or reversed. In revision cases, the Court to which the order is certified will issue the warrants as provided in para. 3.

(vii.) In all cases the Superintendent of the Jail will acknowledge by letter the receipt of any warrant or order or intimation, and will inform the prisoner of the result of his appeal or application, and report the fact in the letter.

(viii.) In all cases in which a fresh warrant has been issued, whether in appeal or revision, the warrant should be returned to the Court issuing it when it has been fully executed.—*Bombay Gazette*, 1879, pp. 471, 475.

The following rules to provide for the due certifying and execution of orders on appeal, reference, and revision have been passed in the N.-W. Provinces:—

I. The Appellate Court shall in every case certify its decision, which shall include the judgment or final order, to the Court from whose order the appeal was preferred.

II. When a sentence on a prisoner is reversed or modified on appeal, and the Appellate Court has not proceeded under the next succeeding rule, the Court to which the decision is certified shall issue a fresh warrant or order conformably thereto.

III. The Appellate Court can, if it sees fit itself, issue a fresh warrant or order conformable to its decision, and if it do so, shall notify the fact to the Court from whose order the appeal was preferred when certifying its decision under Rule I. Ch. XXXI
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IV. When an appeal is rejected or a sentence confirmed, the Court to which the decision is certified shall intimate the same to the officer in charge of the jail of the district in which the prisoner was convicted.

V. When a case is revised by the High Court, the Court of Session or Magistrate to whom the High Court certifies its order under s. 299 (425) of the Code of Criminal Procedure (Act X of 1872) will proceed under that section to issue a fresh warrant or order.

VI. When a prisoner has applied to the High Court in revision to have the sentence passed on him revised, and the High Court rejects the application, intimation to that effect will be made to the officer in charge of the jail through the Court of Session by which, or the Magistrate of the District in which, the sentence was passed.

VII. In cases referred by the Court of Session for the confirmation of sentence of death by the High Court, the High Court will send a copy of its order to the Court of Session, which will then issue a warrant to the officer in charge of the jail as provided in s. 301 (381) of the Code of Criminal Procedure (Act X of 1872), and forward a copy of the same to the Magistrate of the District for information.

VIII. In all cases in which a sentence or order is modified or reversed, whether in appeal or revision, a separate warrant or order shall be issued as regards each prisoner whose sentence has been so modified or reversed, and the original warrant shall be recalled.

IX. A serial number shall be assigned to each trial in every Court. Each Court shall have its own yearly series of numbers to be so assigned; but a Court which exercises summary jurisdiction may, if it please, keep a separate series for its summary trials and a separate series for its ordinary trials. A Court of Session exercising criminal jurisdiction over more than one district may use a similar discretion.

X. Every warrant shall bear the number of the trial in which the commitment was ordered, and in any proceeding recalling a warrant, the number it bears shall be specified.

XI. In all cases the officer in charge of the jail will acknowledge by letter the receipt of any warrant or order or intimation, and will inform the prisoner of the result of his appeal or application, or communicate the same to him through the officer in charge of the jail where he may be undergoing his sentence at the time.

XII. In all cases in which a fresh warrant has been issued, whether on appeal or in revision, the warrant shall be returned to the Court issuing it when it has been fully executed and with an endorsement to that effect.—*Circular Order No. 4 of 1880, N. W. P. Gazette, 1880, p. 1210.*

The following rule is in force in Bengal :—

Decision on appeal to be certified to lower Court.—The Appellate Court shall in every case, except as otherwise herein provided, certify its decision to the Court or Magistrate from whose decision the appeal has been preferred, and it will be the duty of such Court or Magistrate either to issue such warrant as may be necessary in consequence of the decision of the Appellate Court, or to inform the appellant in writing, through the officer in charge of the jail, of the result of his appeal.—*Calc. H. C. C. O. No. 6 of 2nd July 1869, Wilkins, p. 123. Explanation.*—The Appellate Court should at once communicate the decision arrived at to the Court which has to carry out its order. A copy of the formal order passed and of the judgment on appeal should, however, always be attached by the Appellate Court to the record of the original Court, and returned to it therewith.—*Calc. H. C. C. O. No. 4 of 30th March 1878, Wilkins, p. 123.*

Exception.—In cases where an order passed by an officer in charge of a subdivision other than the sudder subdivision is reversed or modified on appeal, the Appellate Court shall certify its decision to the Magistrate of the District, who will issue a warrant to the officer in charge of the jail to give effect to the orders of the Appellate Court, and will inform the Court, from whose orders the appeal was preferred, of its result.—*Calc. H. C. C. O. No. 6 of 2nd July 1869, Wilkins, p. 123.*

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426. Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, if he is in confinement, that he be released on bail or on his own bond.

The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

When the appellant is ultimately sentenced to imprisonment, penal servitude or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

Act X of 1872, s. 281, and s. 297, para. 8 ; see also Act IV of 1877, s. 175, The power given by para. 2 of this section is new.

A sentence of imprisonment cannot be suspended to take effect at a future period, but must commence from the time that the sentence is passed. Where a Deputy Magistrate postponed the execution of a sentence of imprisonment for a stated period at the request of the accused to allow the accused to appeal, it was held that the sentence was bad in law and could not be carried into execution.—*In re Kishen Soonder Bhattacharjee*, 12 W. R., 47. See *In re Krishnanund Bhattacharji*, 3 B. L. R., Ap. Cr., 50.

The natural effect of suspending a sentence of rigorous imprisonment is to relax the severity of the sentence, and to cause the prisoner's simple detention in custody. The same effect follows from suspending a sentence of simple imprisonment, the prisoner whose sentence is so suspended being placed in the position of a prisoner remanded for trial.—*Mad. H. C. Pro.*, 15th April 1868, *Weir*, p. 38.

The following rule is in force in Bombay :—

Whenever under the provisions of s. 281 (of the Criminal Procedure Code) the Court of Session directs an appellant to be released on bail, the Sessions Judge shall order such bail to be given before the Nazir of the District Court or before such Magistrate as the Judge may think most convenient.—*Bombay Gazette*, 1879, pp. 471, 475.

As to High Court's power of revision, see s. 439, *infra*.

427. When an appeal is presented under section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

Act IV of 1877, s. 168, para. 3.

See *The Queen v. Gobin Tewari*, 1 L. R., 1 Cal., 281 ; *Empress v. Mangu*, 1 L. R., 2 All., 340 ; *Empress v. Karim Bakhsh*, 1 L. R., 2 All., 386. See also s. 439, *infra*.

428. In dealing with any appeal under this chapter, the Appellate Court may, if it think additional evidence to be necessary, may either take such evidence itself, or direct it to be taken.

taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

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When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

The taking of evidence under this section shall, for the purposes of Chapter XXV, be deemed to be an inquiry.

Act X of 1872, s. 282 (paras. 1, 3, and 4), and s. 289; Act IV of 1877, s. 176.

When an Appellate Court directs further evidence to be taken by a subordinate Court, it is competent to the subordinate Court before which such evidence is given, if any offence against public justice as described in s. 195 is committed before such Court by a witness whose evidence is being recorded therein, to send the case for investigation to a Magistrate under the provisions of s. 476.—*Reg. v. Bukhar Maifuraz*, 15 W. R., Cr., 64.

See s. 439, *infra*, and *Empress v. Fateh*, I. L. R., 5 All., 217, p. 221.

Where proceedings are submitted under s. 374 for confirmation of sentence of death, the High Court has power to take further evidence itself or direct the Sessions Court to do so.—*S. 375, supra*.

Where an Assistant Magistrate decided a case without examining the witnesses for the defence named by the prisoners, the Sessions Judge on appeal ordered the evidence of those witnesses to be taken by the Assistant Magistrate, and on the depositions being returned to him, proceeded to deal with the case and confirmed the judgment and sentence passed by the Assistant Magistrate. It was held, that the judgment of the Sessions Judge (though in form confirming the Assistant Magistrate's judgment and sentence) was in substance an original judgment, and that an appeal lay from it to the High Court upon the merits.—*Queen v. Mohesh Chunder Chuttopadhia*, 2 W. R., Cr., 13. See *Queen v. Poorno Chunder Doss*, 8 W. R., Cr., 59.

429. When the Judges composing the Court of appeal

are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such examination and such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Act X of 1872, s. 271B; Act XI of 1874, s. 22.

430. Judgments and orders passed by an Appellate

Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXII.

Finality of orders on appeal.

Act X of 1872, s. 285.

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An order by an Appellate Court rejecting an appeal on a perusal of the petition of appeal and the copy of the judgment or order appealed against, and without calling for the record and proceedings in the case, is a final order within the scope of this section and is not subject to revision.—*Empress v. Muhomed Yashin*, I. L. R., 4 Bom., 101.

Under s. 4 (cl. 1) of Act XXXVII of 1855 (which is still in force in the Sonthal Pergunnahs) all sentences passed in criminal cases are final. Accordingly an order under that Act sentencing an accused to imprisonment is not open to revision under Chap. XXXII.—*Dular Dat Rai v. Nijabat Hossein*, I. L. R., 12 Calc., 536.

Decision on appeal to be certified to lower Court.—The Appellate Court shall in every case, except as otherwise herein provided, certify its decision to the Court or Magistrate from whose decision the appeal has been preferred, and it will be the duty of such Court or Magistrate either to issue such warrant as may be necessary in consequence of the decision of the Appellate Court, or to inform the appellant in writing, through the officer in charge of the jail, of the result of his appeal.—*Calc. H. C. C. O. No. 6 of 2nd July 1869, Wilkins*, p. 123.

Explanation.—The Appellate Court should at once communicate the decision arrived at to the Court which has to carry out its order. A copy of the formal order passed and of the judgment on appeal should, however, always be attached by the Appellate Court to the record of the original Court, and returned to it therewith.—*Calc. H. C. C. O. No. 4 of 30th March 1878, Wilkins*, p. 122.

Exception.—In cases where an order passed by an officer in charge of a subdivision other than the sudder subdivision is reversed or modified on appeal, the Appellate Court shall certify its decision to the Magistrate of the District, who will issue a warrant to the officer in charge of the jail to give effect to the orders of the Appellate Court, and will inform the Court, from whose orders the appeal was preferred, of its result.—*Calc. H. C. C. O. No. 6 of 2nd July 1869, Wilkins*, p. 123.

431. Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this chapter shall finally abate on the death of the appellant.

This is new.

In the case of *Imperatrix v. Dongaji Andaji*, I. L. R., 2 Bom., 564, it was held, that Act X of 1872 gave no right to the heir, devisee, executor, or any other representative of a deceased convict to lodge an appeal, or continue and prosecute an appeal already lodged. It was also held, that an appeal lodged by a convict abates on his death, but that the High Court nevertheless might call for and examine the record of the case with a view to revision and rectification, and might make such order thereon as it might consider just.

CHAPTER XXXII.*

OF REFERENCE AND REVISION.

432. A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference; and, pending such

* A Joint Sessions Judge cannot exercise the powers of a Sessions Judge under this chapter.—*In re Musa Asmal*, I. L. R., 9 Bom., 164—nor can matters be referred to him so as to enable him to dispose of them under this chapter.—*Reference by Judge of Surat*, I. L. R., 9 Bom., 352.

decision, may either commit the accused to jail, or release him on bail to appear for judgment when called upon.

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Act IV of 1877, s. 240.

433. When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Disposal of case according to decision of High Court.

The High Court may direct by whom the costs of such reference shall be paid.

Direction as to costs.

Act IV of 1877, s. 241.

434. When any person has, in a trial before a Judge of a High Court consisting of more Judges than one and acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

Power to reserve questions arising in original jurisdiction of High Court.

If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge thinks fit, be admitted to bail,

Procedure when question reserved.

and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment or order as the High Court thinks fit.

Act X of 1875, s. 101.

The power exercised by a High Court sitting as a Court to decide questions of law reserved in criminal cases under this section is the power of review, and the Court is a Court of Reference and Revision.—*Empress v. Appa Subhama Mendre*, I. L. R., 8 Bom., 200. Where a question is reserved, the prisoner's counsel has the right to begin.—*Ib.*

The High Court, on a point of law as to the admissibility of rejected evidence, reserved under cl. 25 of the Letters Patent, 1865, and s. 101 of Act X of 1875, had power, it was held, to review the whole case, and determine whether the admission of the rejected evidence would have affected the result of the trial, or a conviction should not be reversed unless the admission of the rejected evidence ought to have varied the result of the trial.—*Imperatrix v. Pitamber Jina*, I. L. R., 2 Bom., 61.

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The High Court has no power under s. 369, *supra*, to review an order dismissing an application by an accused person for revision, and the only remedy is by an appeal to the prerogative of the Crown as exercised by the Local Government.—*Empress v. Durga Charan*, I. L. R., 7 All., 672; *Empress v. Fox*, I. L. R., 10 Bom. (F. B.), 176. The provisions of s. 369, so far as they affect the High Court, apply merely to questions of law arising in its original criminal jurisdiction, and which are reserved and subsequently disposed of under the provisions of s. 434 and the Letters Patent.—*Empress v. Durga Charan*, I. L. R., 7 All., 672, per BROADHURST, J. See *Reg. v. Godai Raout*, 5 W. R., Cr., 61.

435. The High Court or any Court of Session, or District Magistrate, or any Subdivisional Magistrate empowered by the Local Government in this behalf, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction, for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court.

If any Subdivisional Magistrate acting under this section considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

Orders made under sections 143 and 144 and proceedings under section 176 are not proceedings within the meaning of this section.

The first part of this section corresponds with Act X of 1872, ss. 294, 295, para. 1, using the word 'proceeding' for 'case,' and conferring powers on Subdivisional Magistrates, when empowered by the Local Government. Instead of the words "inferior Criminal Court," s. 295 of the old Code used the words "Court subordinate to such Court or Magistrate." As to the last paragraph, see Act X of 1872, s. 520. See also *In re Chunder Nath Sen*, I. L. R., 2 Calc., 295; *Bradley v. Jameson*, I. L. R., 8 Calc., 580, and Charter Act, 24 and 25 Vic., 104, s. 15.

Section 143 deals with orders against the repetition of public nuisances, s. 144 with orders in certain urgent cases of nuisance, and s. 176 with inquiries into the cause of death.

The second paragraph is new.

See as to the subordination of Courts, s. 17, *supra*.

A Magistrate of a District is competent under this section to call for and deal with the record of any proceeding before any Magistrate of whatever class in his own district. After a considerable conflict this has now been decided by Full Benches of the High Courts of Calcutta, Madras, and Allahabad (*Opendro Nath Ghose v. Dukhini Bewah*, I. L. R., 12 Calc., 473; *In re Padmanabha*, I. L. R., 8 Mad., 18; *Empress v. Lashari*, I. L. R., 7 All., 853), by a Division Bench of the High Court at Bombay (*Empress v. Priya Gopal*, I. L. R., 9 Bom., 100), and by the Chief Court in the Panjab.—*Shumsuddin v. Pir Ali*, Panjab Record, 1885, p. 82.

In the case of *Shoindro Noshyo v. Rung Lal Jhah*, 25 W. R., Cr., 21, it was held that s. 295 of Act X of 1872 applied only to the Sessions Judge of the District and not to Joint Sessions Judges. Under s. 31, *ante*, however, Joint Sessions Judges have the same power as to sentences as those possessed by Sessions Judges and Additional Sessions Judges, and there seems to be no reason why the provisions of this section should not apply equally to them.

Where a Sessions Judge has called for the record of an inferior Court, he ought, *Ch. XXXII s. 435* before referring the case to the High Court for orders, to call upon the inferior Court for an explanation of the order passed, and should submit such explanation together with the rest of the record to the High Court.—*Mailamdi v. Taripulla Pramanik*, I. L. R., 8 Calc., 644.

A Joint Sessions Judge cannot exercise the powers of a Sessions Judge under this chapter (*In re Musa Asmal*, I. L. R., 9 Bom., 164); nor can matters be referred to him so as to enable him to dispose of them.—*Reference by Judge of Surat*, I. L. R., 9 Bom., 352. See s. 193, cl. 2, *supra*, which contemplates only cases for trial.

In the case of *Reg. v. Belilios*, 12 B. L. R., 249; (S. C.) 20 W. R., Cr., 61, it was held by GLOVER, J., that the power of the High Court under s. 294 of Act X of 1872 was limited to sentences and orders passed by subordinate Courts as distinct from judgments of such Courts, and that a judgment could not be interfered with (except in cases where the law gave an appeal upon the facts), unless it could be shown that it was contrary to law. POSTIFEX, J., held that the High Court could not interfere with a conviction unless there had been some material error of law rendering the conviction illegal and improper. See also *Reg. v. Bindu*, 8 W. R., Cr., 60.

A Magistrate acts contrary to law when he determines, on an application by a prisoner for copies of documents required by him for his defence, whether the documents are necessary or not; and therefore a conviction was set aside where the Magistrate refused to grant the prisoner copies of papers necessary for his defence.—*Sheeb Pershad Pandah, Petitioner*, 14 W. R., Cr., 77.

Criminal proceedings are bad unless they are conducted in the manner prescribed by law, and if they are substantially bad in themselves, the defect will not be cured by any waiver or consent of the accused.—*Queen v. Bholanath Sein*, 25 W. R., Cr., 57; (S. C.) I. L. R., 2 Calc., 23; *Reg. v. Bishonath Pal*, 12 W. R., 3.

The High Court is not debarred from interfering in cases requiring the exercise of discretion, if it appears on the face of the proceedings that the Magistrate has exercised no discretion or has exercised his discretion in a manner wholly unreasonable.—*In re Juggut Chauder Chuckerbutty*, I. L. R., 2 Calc., 110. But when a Sessions Judge, after a careful and deliberate weighing of the evidence on the record, comes to a conclusion unfavourable to the accused, the High Court is not justified in interfering under this section, however much it might hold a contrary opinion as to the value of the evidence (*Reg. v. Belilios*, 12 B. L. R., 249; (S. C.) 20 W. R., Cr., 61), for although the High Court has power to go into questions of fact under this section, it will only exercise the power in cases in which it finds that it will be in the interests of justice to do so.—*In re Nobin Krishna Mookerjee v. Rassick Lall Laha*, I. L. R., 10 Calc., 1047. In that case the High Court exercised the power to go into questions of fact. See *In re Tarucknath Mookerjee*, 19 W. R., Cr., 30; (S. C.) 10 B. L. R., 285.

In the case of *In re Mohesh Mistree*, I. L. R., 1 Calc., 282; (S. C.) 25 W. R., Cr., 30, 80, it was held under the old Code, dissenting from a decision of the Bombay High Court in the case of *Sidya bin Satya*, referred to in Mr. Justice Prinsep's 5th edition of the Criminal Procedure Code, p. 269, under s. 295 of Act X of 1872, that where a case of improper discharge came before a District Magistrate, the proper and only course for him was to report the case for orders to the High Court, which, if of opinion that the accused was improperly discharged, might, under s. 297, direct a retrial. See *In re Dijobur Dutt*, I. L. R., 4 Calc., 647; *In re Troylukhyonath Mitter*, 1 C. L. R., 83. Apparently now the procedure, which ought ordinarily to be followed in such a case, is that laid down by this and the next two sections. The Court of Session or District Magistrate would have power under s. 438, *infra*, to report the case to the High Court.

The High Court has no power to interfere where there is a difference of opinion between the Magistrate and the Judge as to the credibility of certain witnesses.—*Shaik Oodla v. Barkat*, 18 W. R., Cr., 7.

It seems doubtful whether the High Court as a Court of Revision has any power to reduce the amount of recognizances which may have been forfeited. The Magistrate of the District should, in such a case, address the Government. See *In re Noor-ool-Huk*, 2 C. L. R., 408; (S. C.) I. L. R., 3 Calc., 757.

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A Sessions Judge has no power to direct a Division Magistrate to cancel his proceedings reviewing the calendars of Magistrates subordinate to him.—*Proceedings, 18th Aug. 1873*, 7 Mad. H. C. R., App., xxvii.

The Magistrate of the District has jurisdiction to call up to his own Court any criminal case without limitation as to the stage of proceeding at which it may be called. If the Magistrate of the District having, in the exercise of his authority, withdrawn any case, finds that it does not come within the jurisdiction of his magistracy, he is not merely competent, but bound to refuse to proceed further with the case.—*Vilactee Khanum v. Meher Ali*, 24 W. R., Cr., 4.

A Magistrate is not competent to refer the proceedings of a superior Court to the High Court.—*In re David*, 6 C. L. R., 245; *In re Ram Lall*, I. L. R., 8 Calc., 875.

Where a Subdivisional Magistrate (a Joint Magistrate), after perusing the calendar of a case tried by a Magistrate subordinate to him (a second class Magistrate), sent for the record and passed an order under s. 195, *supra*, sanctioning the prosecution of a witness in the case for perjury, it was held that the order was illegal. The Court said: "If the Joint Magistrate wished himself to direct a prosecution, he should have acted under s. 476 of the Code of Criminal Procedure, and after some preliminary inquiry, including, I should think in this case, notice to the accused, he should have sent the case for inquiry to the nearest Magistrate of the 1st class; *vile Queen v. Yenlatau Chandramma*, I. L. R., 7 Mad., 169. It may further be doubted whether the Joint Magistrate would have jurisdiction, even under s. 476 of the Code of Criminal Procedure, as the matter did not come under his notice in the course of a judicial proceeding as defined by s. 4 (d) of the Code of Criminal Procedure."—*Empress v. Kupper*, I. L. R., 7 Mad., 560. It appeared that one *Nutchi* had been charged under ss. 457 and 380 of the Indian Penal Code, and that the Magistrate disbelieving the evidence had discharged him on the ground that the case had been concocted. There was no complaint before the Joint Magistrate.

The working of the provisions of this section is somewhat limited by the extremely general terms of s. 537, which says that, subject to the provisions thereinbefore contained, no finding, sentence or order by a Court of competent jurisdiction shall be reversed or altered under Chap. xxvii, or on appeal or revision, on account of any error, omission, or irregularity in the complaint, summons, warrant, charge, judgment, or other proceeding before or during trial or in any inquiry or other proceeding under this Code, or of the want of any sanction required by s. 195, or of the omission to revise any list of jurors or assessors in accordance with s. 324, or of any misdirection in any charge to a jury, unless such error, omission, irregularity, want, or misdirection had occasioned a failure of justice. The effect of that section is to leave it entirely to the discretion of the Revising or Appellate Court, whether it will interfere, and while some Benches are ready to admit the possibility of an accused person having been prejudiced by errors, omissions or other irregularities, other Benches refuse to exercise their powers under s. 435, unless there is the clearest ground shown for alleging prejudice.

Where an offence is tried by a Court without jurisdiction, the proceedings are void under s. 530, *infra*. See *Empress v. Husein Gaibu*, I. L. R., 8 Bom., 307.

A Collector as such, it has been held, is not subject to the revisional jurisdiction of the High Court, and that Court in the exercise of such jurisdiction is not competent to deal with an alleged illegal order made under the Penal Code by a Collector.—*In re Deanul Hosen*, 10 C. L. R., 14. In that case the Collector in certain *butwara* proceedings fined a *mukhtear* under s. 182 of the Penal Code for making false statements in support of a petition presented by his client.

Sessions Judges are to be guided by, but not to go beyond, the following instructions in communications with Magistrates:—

District Magistrates are to comply with all requisitions for records, returns, and information made by Sessions Judges with regard to any case appealable to them or referable by them to the High Court, whether decided by the District Magistrate or by the other magisterial officers of the district, or made by Sessions Judges under the orders of the High Court in the exercise of their duty of superintendence over subordinate Courts. District Magistrates are also to render any explanation which Sessions Judges may require from them, and to obtain and submit any explanation which Sessions Judges may require from Subordinate Magistrates, in order to assist the Appellate Courts in respect of the three classes of cases above referred to.—*Calc. H. C. C. O. No. 4 of 16th December 1876*, *Wilkins*, p. 124.

The following rules are in force in Bombay :—

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When the High Court calls on a Magistrate for the record of a case, which record has already been sent to the Sessions Court in appeal, the Magistrate shall make a return accordingly to the writ. When a case is called for at the same time both on appeal and by the High Court, in revision, the Magistrate shall comply with the order of the Court of Appeal, and make a return accordingly to the writ of the High Court.

In order to provide that a proper return to a writ of the Court of Session calling for record and proceedings may be made, no Magistrate shall part with the custody of the original papers of a case which it may be necessary to forward to the Police Commissioner, until the period within which an appeal can be made has expired, or the appeal has been disposed of.—*Bombay Gazette*, 1879, pp. 471, 475.

Copy of Appellate Court's order to be certified with proceedings called for by the High Court.—When proceedings are called for by the High Court from any Magistrate, the copy of any order made by the Appellate Court and transmitted to the lower Court shall be forwarded to the High Court with the record and proceedings of the Magistrate.—*Bombay Gazette*, 1879, pp. 471, 475.

436. When, on examining the record of any case under

Power to order commitment. section 435 or otherwise, the Court of Session or District Magistrate considers that such case is triable exclusively by the Court of Session, and that an accused person has been improperly discharged by the inferior Court, the Court of Session or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Court of Session or District Magistrate, improperly discharged :

Provided as follows—

(a) that the accused has had an opportunity of showing cause to such Court or Magistrate why the commitment should not be made :

(b) that, if such Court or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Court or Magistrate may direct the inferior Court to inquire into such offence.

Compare s. 296 of Act X of 1872, paras. 2 and 3, as amended by Act XI of 1874, s. 29.

The words 'case triable exclusively by the Court of Session' are used instead of the words 'Sessions case.' This alteration has been made apparently in consequence of the cases of *Reg. v. Seetul Pershad*, 5 All., 168; *Joy Kurn Singh v. Man Patuck*, 21 W. R., 42; *Empress v. Kanchun Singh*, I. L. R., 1 All., 413; *Empress v. Hary Doyal Kurmohar*, I. L. R., 4 Cal., 16; (S. C.) 3 C. L. R., 268; *Empress v. Tarachurn Bagdi*, 7 C. L. R., 168, where the term 'Sessions case' in s. 296 of Act X of 1872 was held to refer to cases triable by a Court of Session only.

The High Court has power under this section and ss. 439 and 423, if it consider that an accused person has been improperly discharged, to order him to be committed for trial.—*Empress v. Ramlal Singh*, I. L. R., 6 All., 40.

The necessity for altering a conviction from one section to another for cognate offences when the accused has not been prejudiced is no sufficient ground for reference to the Court of Revision.—*Empress v. Ishan Chundra De*, I. L. R., 9 Cal., 847.

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As to the use of term "inferior Court" in this section, see note to preceding section.

Proviso (a) is new. It is an exception to the general rule laid down by s. 440, *post*. It follows the ruling in the case of *In re Bundhoo*, 22 W. R., Cr., 67, where it was said that it is a general principle of English law that no person shall be affected in his personal liberty without having an opportunity given him to answer the charge or matter of complaint for which he is arrested and put in prison; and that, acting upon this principle, the High Court, although there was nothing in s. 296 (of the old Code) with regard to summoning or giving notice to an accused person, almost never exercised its powers of revision to the detriment, or adversely to the interests, of any person without first giving him an opportunity of being heard in the matter. See also *In re Nowali*, 24 W. R., Cr., 70; *In re Dwarhanath Bhuttacharya*, 1 C. L. R., 93; *Reg. v. Devama*, 1 L. R., 1 Bom., 64; *In re Khamir*, 1 L. R., 7 Calc., 662; (S. C.) 10 C. L. R., 8. In the last mentioned case it was held, that the Court had power to direct the subordinate Court to inquire into any offence for which it considered a commitment should be ordered. Where an accused person had been discharged by a Subordinate Magistrate, and the District Magistrate directed the committal of the accused to the Court of Session under this section without calling upon him to show cause why he should not be committed, it was held that the order of committal and commitment made thereunder were illegal.—*Reg. v. Kanjamalai Padayachi*, 1 L. R., 6 Mad., 372.

A Sessions Judge may, under this section, after a Magistrate has discharged an accused person, order the Magistrate to commit the accused person to the Sessions.—*Syud Musnud Ali Chowdhry, Petitioner*, 7 W. R., Cr., 38. Whether he will do so or not is within his discretion, with the exercise of which the High Court will not interfere.—*Reg. v. Sheetaram Chowdhry*, 2 W. R., Cr., 44.

Under the old Code it was held, that a Sessions Judge could direct a commitment only for some offence with which the accused was substantially charged in the complaint, or which was specified in the warrant, or which was framed as a formal charge by the Magistrate at the preliminary hearing.—*Reg. v. Taruck Nath Mookerjee*, 19 W. R., Cr., 30; (S. C.) 10 B. L. R., 285; *Joy Kurn Singh v. Man Patuck*, 21 W. R., Cr., 41. Otherwise, under the old Code, a man might have been committed by the Judge for trial of an offence of which he had never been accused or never even heard a word, until he was apprehended under the commitment. Now under proviso (a) he would have an opportunity of showing cause. A commitment made under this section without giving such an opportunity is illegal.—*Reg. v. Kanjamalai Padayachi*, 1 L. R., 6 Mad., 372.

Where an order on the face of it appears to have been made without jurisdiction, no subsequent explanation can make it good.—*In the matter of Abdool v. Lucky Narain Mundul*, 1 L. R., 5 Calc., 132, *per* BROUGHTON, J.

The discharge of a person accused of an offence by the Court of Sessions is no bar to his being again apprehended and brought before a Magistrate with a view to commitment. The Magistrate may proceed in such a case of his own motion, and his authority to do so is quite independent of an order from the Court of Sessions under this section, which applies to cases where the Magistrate has not thought fit to commit.—*Reg. v. Tilkoo Goala*, 8 W. R., Cr., 62.

Section 101 of the Mutiny Act (41 Vict., cap. 10) does not deprive the Criminal Courts of jurisdiction over British soldiers committing offences within the territorial limits of such Courts, nor render the exercise of their jurisdiction dependent upon the sanction of the Commander-in-Chief, and is merely permissive of a military trial being held.—*In re Felix Maguire*, 4 C. L. R., 432; (S. C.) 1 L. R., 5 Calc., 124. See the Andaman and Nicobar Islands Reg. III of 1876, s. 13.

437. On examining any record, under section 435 or

Power to order in- otherwise, the High Court or Court of
quiry. Session may direct the District Magistrate
by himself or by any of the Magistrates subordinate to him
to make, and the District Magistrate may himself make, or
direct any subordinate Magistrate to make, further inquiry

into any complaint which has been dismissed under section Ch. XXXII 203, or into the case of any accused person who has been s. 437 discharged.

* Compare Act X of 1872, s. 298, as amended by Act XI of 1874, s. 31.

As to subordination of Magistrates, see s. 17, *supra*, and the note to s. 236, *supra*.

This section gives the Sessions Court and District Magistrate the power (which was exercised solely by the High Court under the former Code of Criminal Procedure) of reviving a prosecution once dealt with by the Magistrate. See *Empress v. Papadu*, 1 L. R., 7 Mad., 454, p. 457; *In re Troylokhyanath Miller*, 1 C. L. R., 83.

It would seem that where further evidence is procurable, any Magistrate who has discharged an accused person might revive criminal proceedings before himself. — *Empress v. Donnelly*, 1 L. R., 2 Calc., 405. See cases cited in that case.

In the case of *Empress v. Bhup Singh*, 1 L. R., 2 All., 771, a Sessions Judge, after having asked the assessors their opinion in a case which was being tried, suspended the trial of the case, and made a reference to the High Court on a question of jurisdiction which had arisen in the case; and it was held, that it was not intended that the section should so be used, and that the Sessions Judge was bound to dispose of such question himself.

A Deputy Magistrate placed in charge of the current duties of the District Magistrate's office is not thereby vested with jurisdiction under this section. — *Ramanund Mahton v. Koylash Mahton*, 1 L. R., 11 Calc., 236.

Further Inquiry.—There appears to be some slight conflict in the decisions of the High Court as to the circumstances under which "further inquiry" may be ordered. In the case of *Chundi Bhuttacharjee*, 1 L. R., 10 Calc., 207, MITTER and FRED, JJ., held, that the "further inquiry" contemplated by the section was an inquiry upon further materials and not a re-hearing upon the same evidence which was before the Magistrate who held the first inquiry. So in the case of *Jeebun Kristo Roy v. Shib Chunder Dass*, 1 L. R., 10 Calc., 1027, TOTTENHAM and NORRIS, JJ., held, that the law allowed a "further inquiry" only where there had not been a full inquiry, and where further evidence was disclosed. In that case there had been a full inquiry, and after all the evidence for the prosecution had been taken, the Deputy Magistrate, who disbelieved the evidence, discharged the accused under s. 253. The District Judge ordered a further inquiry on the ground that he considered that there was sufficient evidence to support the case of the prosecution, and that the Deputy Magistrate's order was "a long and labored effort to explain away the evidence for the prosecution." See *Darsun Lall v. Jumuk Lall*, 1 L. R., 12 Calc., 522.

These cases, it need hardly be pointed out, turned entirely upon the evidence. It is quite possible, however, that an order dismissing a complaint under s. 203, or discharging an accused person under s. 253 of the Code, may have been the result of the Magistrate having taken an entirely wrong view of the law applicable to the facts in evidence. It would seem not unreasonable under such circumstances for the Court exercising powers under this section to point out in what respect the view taken of the law was wrong, and to direct a further inquiry upon the same evidence, regard being had to the statement of the law made by the Court directing the inquiry. This view has been apparently adopted by the High Court at Calcutta in two unreported cases, in both of which the cases of *Chundi Bhuttacharjee*, 1 L. R., 10 Calc., 207, and *Jeebun Kristo Roy v. Shib Chunder Das*, 1 L. R., 10 Calc., 1027, were cited. The first (*In re Bolaki Hajjam*, Criminal Rule from Begusarai, No. 9 of 1885, decided 29th January 1885) of these cases was decided by McDONNELL and MACPHERSON, JJ.

In the other case referred to (*In re Sheo Narain*, Criminal Rule from Sarun, No. 147 of 1885, decided 23rd May 1885), a Joint Magistrate discharged the accused who were charged with riot, grievous hurt, and assault. They pleaded an *alibi*. The alleged riot had reference to a narrow strip of land, and an issue was raised as to whether it belonged to the complainant or to the accused. There was a considerable body of evidence to show that it belonged to the complainant; but there was no evidence on the record (although an extrajudicial order of another Magistrate was relied on to prove it, which it did not) to prove that it belonged to the accused.

Oh. XXII The Magistrate held that there was *no* evidence that the land did belong to the complainant, but that from the nature of the situation of the strip of land, it must be assumed to have belonged to the accused, who held the adjoining land, and disregarding the plea of *alibi* set up, he discharged the accused on the ground that they had acted in self-defence. There had been a full inquiry, all the witnesses for the prosecution having been called and examined. The High Court (MITTAL and McDONELL, JJ.) reversed the order. The rule upon which the High Court acted was granted by PRINSEP and PIGOT, JJ.

In the case of *Empress v. Amir Khan*, I. L. R., 8 Mad., 336, the Madras Court, while it held that where a person had been discharged, further inquiry could not be directed under s. 437 on the ground that the Magistrate had not rightly appreciated the credit due to the witnesses, considered that further inquiry should only be directed when other witnesses might have been examined, or when witnesses had not been properly examined, and that, inasmuch as the section (437) does not direct that the evidence already taken should be taken again, the further inquiry should ordinarily be made by the Magistrate who made the original inquiry. TURNER, C.J., in delivering the judgment of the Court, said: "The conclusion at which we arrive as to the meaning of 'further inquiry' is in accordance with the decisions of the Calcutta High Court."

Where a Deputy Magistrate discharged a person accused of an offence on the ground that the evidence was insufficient for a conviction, the Magistrate of the District recorded an order, stating that in his opinion the accused had been improperly discharged, and directing under s. 437 that further inquiry should be made, and the accused called upon to enter upon his defence. He was tried by the Magistrate of the District, convicted and sentenced; but the witnesses for the prosecution were not recalled. It was held the subsequent proceedings of the District Magistrate were bad, inasmuch as the conviction was based practically upon evidence not recorded in the course of a "further inquiry" before him, but upon evidence recorded by the Deputy Magistrate.—*Empress v. Hasnu*, I. L. R., 6 All., 367.

In the case of *Empress v. Dorabji Hormazji*, I. L. R., 10 Bom., 131, it was held that, where a complaint had been dismissed under s. 203 of the Code, or an accused person discharged by a Subordinate Magistrate, the District Magistrate had power under s. 437 to direct any Magistrate subordinate to him to make further inquiry into the complaint dismissed, or into the case of the accused person discharged, even if there were no additional evidence disclosed or allegation that such existed, "further inquiry" not being restricted to "inquiry upon further materials or additional evidence." In that case the cases of *Chandi Churn Bhattacharjee v. Hem Chunder Banerjee*, I. L. R., 10 Cal., 207, *Jeebun Kristo Roy v. Shih Chunder Das*, I. L. R., 10 Cal., 1027, *Empress v. Hasnu*, I. L. R., 6 All., 367, and *Empress v. Amir Khan*, I. L. R., 8 Mad., 336, were commented on.

In the case of *Empress v. Papadu*, I. L. R., 7 Mad., 455, an order directing a further inquiry was held to be good, where the Magistrate on the original hearing had taken the evidence of the accused and his witnesses, and disbelieving that evidence, had discharged the accused. In considering, it was held under s. 297 of the former Code, whether a person has been improperly discharged by a Magistrate, the High Court is not restricted to an error of law only, but may order a trial where *prima facie* the evidence establishes a case against the accused to which he should be required to enter in his defence.—*In re Troy'okhyannath Mitter*, 1 C. L. R., 83. See *In re Mohesh Mistree*, I. L. R., 1 Cal., 282; *In re Nobin Kushan Mookerjee v. Rassack Lall Laha*, I. L. R., 10 Cal., 1047.

In the case of *Empress v. Erramreddi*, I. L. R., 8 Mad., 296, the accused, being charged with theft and mischief in respect of certain branches of a tree, was tried by a Subordinate Magistrate on the charge of theft, and acquitted on the ground that as against the complainant he had title to the tree. On the application of the complainant, the District Magistrate directed further inquiry under s. 437, and on reference to the Court of Sessions, the Sessions Judge held that as no inquiry into the charge of theft had been held, the order was legal. The High Court held that the District Magistrate had no power to pass such an order.

Notice.—The High Court at Allahabad apparently considers that notice calling upon an accused person to show cause why action should not be taken against him before an adverse order is made under this section, directing a further inquiry, is

necessary.—*Empress v. Haanu*, I. L. R., 6 All., 367. In the case of *Chundi Churn Bhuttacharjee*, I. L. R., 10 Calc., 207, MITTER and FIELD, JJ., expressed an opinion that in that case the accused ought to have had notice in order to enable him to appear and show cause why an order should not have been made under s. 437 against him. In a subsequent case, *Nobin Kristo Mooharjee v. Russick Lall Laha*, I. L. R., 10 Calc., 268, see p. 273, however, where that case was considered, FIELD, J., explained that it was not intended in the case of *Chundi Churn Bhuttacharjee* to lay down a general rule, and that the opinion expressed by the Court in that case had reference to the particular facts of the case.

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The question as to whether the notice is necessary before directing further inquiry was discussed in *Empress v. Dorabji Hormasji*, I. L. R., 10 Bom., 130; and it was held not to be absolutely necessary, though the Court considered that in such cases it is well that notice should be given. The general principle of criminal jurisprudence is, that no order prejudicially affecting an accused person should be passed without giving him an opportunity of being heard.

In the case of *Empress v. Papadu*, I. L. R., 7 Mad., 455, the accused, six in number, were charged with rioting. The Magistrate took the evidence of the complainant and of his witnesses, and having recorded that the charge was not proved, discharged the accused under s. 253, *supra*. The Sessions Judge under this section ordered a further inquiry, and the Magistrate took the case on his file again, and the complainant called further witnesses, and it was found there had been no riot, but that two of the accused had committed an assault. It was held that the Magistrate had power on the further inquiry to convict these two of assault. It will be observed that in this case further inquiry was ordered after the complainant and his witnesses had been examined.

While in the case of *Chundi Churn Bhuttacharjee*, I. L. R., 10 Calc., 207, it was said that a Sessions Judge has no power under this section to direct a particular Magistrate by name to make the further inquiry contemplated by the section, in the case of *Empress v. Amir Khan*, I. L. R., 8 Mad., 436, the Court expressed an opinion that ordinarily the further inquiry should be made by the Magistrate who made the original inquiry.

Section 440 provides that "no party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision: Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect s. 439, paragraph 2," and the Court expressed an opinion, in the case of *Nobin Kristo Mooharjee v. Russick Lall Laha*, I. L. R., 10 Calc., 268, that, as a matter of strict law, the accused was not entitled to be heard by a District Magistrate before he granted order directing an inquiry under s. 437. See *Reg. v. Devama*, I. L. R., 1 Bom., 64.

438. The Court of Session or District Magistrate may, Report to High Court. if it or he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court the results of such examination, and, when such report contains a recommendation that a sentence be reversed, may order that the execution of such sentence be suspended, and if the accused is in confinement, that he be released on bail or on his own bond.

Compare s. 296, para. 1, of Act X of 1872.

The provision empowering the Court reporting to the High Court, when the report recommends that the sentence be reversed, to suspend the execution of the sentence and to release the accused on bail, is new. Such power was by s. 297 of Act X of 1872 conferred on the High Court only. The Court would have no power under this section to admit the accused person to bail if the report did not recommend that the sentence be reversed. See *Kunhai Sahu's Case*, 23 W. R., Cr., 40; *Mohesh Mundul v. Bholanath Mundul*, 3 C. L. R., 404.

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s. 438 A Sessions Court, in referring a case under this section, may possibly, however, under s. 498, *infra*, admit the accused to bail.

A Joint Magistrate of a District has no power to make a reference to the High Court under this section. Such references can be made only by a Sessions Judge or by a Magistrate of a District.—*Reg. v. Chooramani Sant*, 14 W. R., Cr., 25.

As to bail, see Chap. XXXIX, *infra*.

Where an offence is tried by a Court without jurisdiction, the proceedings are void under s. 530, and it is not necessary, in case of an acquittal, for the High Court to upset the acquittal before a retrial can be had under s. 403.—*Empress v. Hussein Gaibu*, I. L. R., 8 Bom., 307.

In a case where a Sessions Judge has called for the record of an inferior Court, he is, before referring the case to the High Court for orders, bound to call upon the inferior Court for an explanation of the order passed, and should transmit such explanation together with the rest of the record to the High Court.—*Majlamdi Fukir v. Taripullah Pramanik*, I. L. R., 8 Cal., 644.

Section 440 provides that "no party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision: Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect s. 439, paragraph 2," and the Court expressed an opinion, in the case of *Nobin Kristo Mookerjee v. Russick Lall Laha*, I. L. R., 10 Cal., 268, that, as a matter of strict law, the accused was not entitled to be heard by a District Magistrate before he granted an order directing an inquiry under s. 437. See *Reg. v. Devama*, I. L. R., 1 Bom., 64.

When a Sessions Judge considers that a judgment or order is contrary to law, or that the punishment is too severe, he should report the proceedings to the High Court in the manner prescribed by the Circular Order of the 15th July 1863, which is applicable to references under this section.—*Rajkrishna Paul v. Nityanund Paul*, 20 W. R., Cr., 50.

Reports under this section should always be accompanied by the records of the case to which they relate and by an English letter commencing: "Under s. 438 of Act X of 1882, I herewith transmit the record of the case noted in the margin, to be laid before the High Court, with the following report." There will then be stated—

1st.—A brief analysis of the case.

2nd.—The order recommended for revision.

3rd.—In what particular portion of that order the Court making the reference considers an error on a point of law to exist.

4th.—The grounds upon which, in the opinion of such Court, the order should be reversed.

Unless there be any particular reason why delay should be avoided, the explanation of the Magistrate who passed the order should be called for and accompany the reference.—*Calc. H. C. C. O. No. 18 of 15th July 1863, Wilkins*, pp. 124, 125.

If the Sessions Judge is competent to deal with a case appealed to him, he should not refer it to the High Court (*In re Sree Kissen*, 9 W. R., Cr., 5; *Reg. v. Nusseerooddeen Shazwal*, 11 W. R., Cr., 24); and a Magistrate should exercise a discretion as to whether he will refer a case to the High Court, and is not bound to refer every case in which he may detect an error.—*Nibarun Chunder Dass v. Bhuggobutty Churn Chatterjee*, 20 W. R., Cr., 40.

In Madras, the following orders have been passed by the High Court:

A reference should contain the opinion of the officer referring the proceedings and the grounds upon which such opinion is based (*Mad. H. C. Pro.*, 4th November 1864), and a copy of the proceedings, if in English, or if in the vernacular, an English translation thereof, must be sent up with all cases referred.—*Mad. H. C. Pro.*, 14th Dec. 1865.

The fact of there being no evidence to support a conviction is a question of law and affords ground for a reference. The fact of the evidence being insufficient is a question of fact and affords no such ground.—*Mad. H. C. Pro.*, 30th Oct. 1867; *Mad. H. C. Pro.*, 29th Nov. 1869. See also *In re Kishen Soonder Buttacharjee*, 12 W. R., Cr., 47.

A District Magistrate is not bound, in opposition to his own opinion, to report proceedings for the orders of the High Court.—*Mad. H. C. Pro.*, 19th March 1873.

References in cases in which accused persons have been illegally sentenced to imprisonment and whipping should state whether the sentence of whipping has been carried into execution or not.—*Mad. H. C. Pro.*, 5th Nov. 1878. Ch. XXXII s. 432

In all references only the material parts of the record need be sent up to the High Court.—*Mad. H. C. Pro.*, 16th Sept. 1879, *Weir*, p. 33.

In Bombay, all references submitted to the High Court under this section are to be accompanied by the referring officer's opinion, by the record of the case, and a statement of the case in English, giving—

1. A brief abstract of the case.
2. The sentence or order of the lower Court, and the name of, and powers exercised by, the Magistrate passing it.
3. The particular portion of the sentence or order in which an error on a point of law is believed to exist.
4. The grounds upon which the order of the lower Court should be reversed or modified.

Note.—It should also be stated how much of the sentence the accused has undergone, and if he has been sentenced to fine or whipping, whether the fine has been realized or the whipping has been inflicted.—*Bom. H. C. Cir.*, 46a.

Affidavits in support of applications to the High Court by whom to be verified.—When any person desires to make any application to the High Court in its civil or criminal jurisdiction, and to support the same by an affidavit or statement on solemn affirmation, any Court, or Magistrate, or the Clerk of a District Court, shall, on application, take such affidavit or statement on solemn affirmation and authenticate the same by signature.—*Bombay Gazette*, 1879, pp. 471, 475.

The following rules are in force in the Punjab :—

Cases submitted to the Chief Court for revision of sentence should always be accompanied by the records and by a statement of the case in English, giving—*first*, a brief abstract of the case; *secondly*, the sentence or order of the lower Court, and the name of, and the powers exercised by, the Magistrate passing it; *thirdly*, the particular portion of the sentence or order in which an error of law was believed to exist; *fourthly*, the grounds upon which the order of the lower Court should be reversed or modified. It should also be noted how much of the sentence the accused has undergone, and if he has been sentenced to fine or whipping, whether the fine has been realized or the whipping inflicted.

A distinction should be drawn between illegal sentences and irregular procedure. The former must in all cases be sent up to the Chief Court, because no other Court is competent to alter a sentence or order except on appeal. In the latter class of cases, it is discretionary with the Commissioner or Deputy Commissioner to refer the proceedings to the Chief Court for orders.

Cases should be reported for revision in the annexed form :—

| REVISION SIDE | | CRIMINAL. |
|--------------------------|----------|---------------------------------------|
| Cases reported by | with No. | Commissioner (or Deputy Commissioner) |
| sioner) | | under section 296 of |
| Criminal Procedure Code. | | |
| THE CROWN <i>versus</i> | | Accused. |

Charge :

The facts of this case are as follows :—

The accused, on conviction by Magistrate of section of the Indian Penal Code to be forwarded for revision on the following grounds.

exercising the powers of a district, was sentenced under The proceedings

(Here state grounds.)

The Officer Commissioner (or Deputy Commissioner).

—*Smyth*, p. 103.

When the District Magistrate has, by forwarding the proceedings of a first class Magistrate to the High Court under this section, put it out of the power of an appellant to obtain a copy of the judgment, the Sessions Court should accept the petition of appeal, though not accompanied by a copy of the judgment, as required by law. The Sessions Court should then immediately write to the High Court, stating that an appeal has been made, and asking for

Ch. XXXII the return of the record and proceedings. The High Court will, thereupon, stay
s. 439 the exercise of its revisional jurisdiction, and await a report from the Sessions Court
of the result of the appeal.—7th May 1881, Bom. Cir., p. 15.

439. In the case of any proceeding the record of which has been called for by itself, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of appeal by sections 195, 423, 426, 427, and 428, or on a Court by section 338, and may enhance the sentence, and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

Compare Act X of 1872, s. 297. The second, third, and fourth paragraphs are new. This section, like s. 435, is not in terms confined to 'judicial proceedings,' but refers to 'any proceeding.' In addition to the powers of revision which may be exercised by the High Court, the powers conferred on a Court of Appeal by s. 195 or on a Court by s. 338 and the power of enhancing a sentence have been conferred.

The second paragraph of the section is an exception to the rule laid down by the next section.

The last paragraph of the section makes it clear that the High Court cannot convert a finding of acquittal into one of conviction. In many cases under the former Code the High Court refused to interfere with an acquittal, the reason being that the Government had the right to appeal, and that if it did not choose to do so, the Court would not set aside the acquittal.—*Reg. v. Toyab Sheikh*, 5 W. R., Cr., 2; *Reg. v. Sobeel Mahi*, *ib.*, 32; *Reg. v. Dorabji Palabhi*, 11 Bom. H. C. R., 117; *Reg. v. Hatoo Khan*, 21 W. R., Cr., 21; (S. C.) 12 B. L. R., Appx., 22; *Reg. v. Golam Ismail*, 1 L. R., 1 All., 7; *Empress v. Miyaji Ahmed*, 1 L. R., 3 Bom., 150; *Empress v. Chedi Rai*, 7 C. L. R., 142. Even where the acquittal was an error of law, the Court refused to interfere.—*In re Hardeo*, 1 L. R., 1 All. (F. B.), 139. But see notes to s. 437.

Section 195 deals with sanctions to prosecute in case of offences in contempt of the lawful authority of public servants, or against public justice or relating to documents given in evidence; s. 423 gives the powers of Appellate Courts in disposing of appeals; s. 426 relates to the suspension of sentence pending appeal and to releasing appellants on trial; s. 427 gives the Court power to arrest an accused in case of an appeal from an acquittal; s. 428 empowers the Court to take further evidence or direct it to be taken, and s. 338 gives the Court power to direct a tender of pardon.

CRIMINAL PROCEDURE CODE (ACT X OF 1882), *section 439—Revision, Practice of High Court in—Rioting—Common object, Effect on judgment of not stating in charge—Charge, Defect in—Judgment, Defect in—Penal Code (Act XLV of 1860), section 147.*] Where certain accused persons were convicted of rioting, and it appeared that the charge did not specify any common object, and that neither the judgment of the Original Court nor that of the Sessions Judge in appeal found what was the common object which made the assembly of which the prisoners were members of an unlawful one : *Held*, that these defects did not vitiate the proceedings, there being ample evidence on the record to prove what the common object of the assembly was and to justify the conviction for the offence of which the lower Courts had found the accused guilty. *Held*, further, that in such a case a rule to show cause why the conviction should not be quashed under the provisions of section 439 of the Code of Criminal Procedure ought not to be granted unless on the materials which are before the Court when the rule is granted, it would be prepared to make the rule absolute if no cause be shown against it.

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The provisions of this section in no way affect the powers of the High Court Ch. XXXII as a Court of Revision vested in it by the High Court's Act.—*In re Chakowri Lall* s. 439 v. *Moti Kurmi*, 13 C. L. R., 275.

The Court will not, as a rule, on revision, go into the evidence and examine the conclusions of the Court below, otherwise an appeal would virtually lie against every decision of the subordinate Courts, which was clearly not intended by the Legislature. Nevertheless, in cases requiring the exercise of discretion where it appears upon the face of the proceedings that the Magistrate has exercised no discretion at all, or has exercised his discretion in a manner wholly unreasonable, the Court will interfere, just as in cases where the Magistrate has been guilty of misconduct.—*In re Jaggut Chunder Chuckerbutty*, I. L. R., 2 Calc., 111. See *Shaikh Munglo v. Durga Narain Nag*, 25 W. R., Cr., 74; *In re Debi Churn Biswas*, 20 W. R., Cr., 40.

So in Bombay it was held that in cases in which the law allows no appeal, the High Court as a Court of Revision will not, except on very exceptional grounds, exercise the powers of an Appellate Court; but where such exceptional grounds exist, as where the conviction is not in any degree supported by the evidence, the High Court will exercise its discretion and reverse the conviction and sentence.—*Empress v. Sheikh Sahib Badrudin*, I. L. R., 8 Bom., 197. Moreover, the High Court cannot, in the exercise of its powers of extraordinary jurisdiction in criminal matters, interfere unless all other remedies provided by law have been previously exhausted. Thus, persons convicted by a Magistrate who have a right of appeal to the Sessions Court cannot move the High Court.

REVISION—Criminal Cases—Power of High Court in Revisional Cases

—*Power to go into case on facts—Criminal Procedure Code (Act X of 1882), section 439.* Under section 439 of the Code of Criminal Procedure, 1882, the High Court has power to consider the facts of a case in revision. *2 L.R. 21 Cal 931*

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not justified in interfering under this section, however much it might hold a contrary opinion as to the value of the evidence.—*Reg. v. Belilios*, 20 W. R., Cr., 61. See, however, the remarks of MARKBY, J., in *In re Jaggut Chunder Chuckerbutty*, I. L. R., 2 Calc., pp. 112-113.

It is not because circumstances occur to the Magistrate of a District which would render necessary a more severe sentence than that passed or a different charge than that framed by a Deputy Magistrate that the High Court should interfere. There must be matter on the record of the case showing that the charge has been improperly framed, or that the sentence passed is clearly inadequate to the offence.—*Reg. v. Hurnath Sing*, 20 W. R., Cr., 22.

A valid conviction, arrived at by a Magistrate who had jurisdiction in the matter, cannot be set aside simply because subsequent to the trial and conviction fresh evidence has been discovered which may tend to convict the accused of an offence other than that for which he was convicted.—*Reg. v. Ramdoyal Muhara*, 21 W. R., Cr., 47.

Certain persons were convicted by a Magistrate of the first class of assault. The case was brought to the knowledge of the High Court by the complainant preferring a petition to it, together with a copy of the Magistrate's order. This petition was laid before a Judge of the High Court, who, observing that the case was one in which the Magistrate should have taken security from such persons for keeping the peace, directed the Magistrate to summon them to show cause why they should not be required to enter into a bond to keep the peace. The Magistrate accordingly issued summonses which purported to be issued "under the orders of the High Court." Evidence was taken, and an order made requiring such persons to enter into a bond. They then, having knowledge of the order of the Judge, applied to the High Court to set aside the order requiring them to keep the peace, on the ground that the Magistrate had not proceeded of his own motion, but under the Judge's order, which, they contended, was made without jurisdiction, and also, that the summonses had not set forth the report or information on which they were issued. It was held, that the Judge's order was one which he was competent to make as a Court of Session; and that, inasmuch as the applicants had not been in the slightest degree prejudiced by the defect in the

Ch. XXXII summonses which were issued, the defect mentioned was not a ground upon which s. 439 a. 439 to set aside the Magistrate's order.—*Empress v. Muhamed Jafir*, I. L. R., 3 All., 545.

Enhancement of Sentence.—By s. 423, *supra*, the power which an Appellate Court, as such, had under s. 250 of the repealed Code, to enhance a sentence has been expressly removed, and its capacity to interfere with the punishment awarded by the trying Court is now limited among other matters to altering the nature of the sentence, "but not so as to enhance the same." This section (439) confers on High Courts (and on High Courts only) the power to do all that may be done by an Appellate Court under ss. 423 and 426, and in terms declares that they may do what an Appellate Court cannot, namely, "enhance the sentence." Accordingly it has been held by a Full Bench of the Allahabad High Court that a High Court in the exercise of its powers of revision can enhance a sentence so as to alter its nature.—*Empress v. Ram Kuria*, I. L. R., 6 All. (F. B.), 622.

In the case of *Empress v. Mehler Ali*, I. L. R., 11 Calc., 530, a Police Head Constable, convicted under s. 330 of the Penal Code, was sentenced by a Sessions Court to three months' simple imprisonment. In dismissing the appeal, PRINSEP and FIGOT, JJ., enhanced the sentence to six months' rigorous imprisonment. On the attention of the Court being called to s. 425, *supra*, they held that they were competent to enhance the sentence under this section, the provisions of which must be read with s. 425.

Paragraph 1 of s. 297 of Act X of 1872 provided, that when it appeared to the High Court that there had been a 'material error' in any judicial proceeding of any Court subordinate to it, it might pass such sentence, judgment or order thereon as it thought fit. The words 'material error' do not occur in the present Code, but the following cases will be found of use in considering whether a case had been made out for the interference of the Court.

'Material error' means an error in law or procedure which affects the decision (*Debi Churn Biswas, Petitioner*, 20 W. R., Cr., 40), or has occasioned a failure of justice.—*Reg. v. Ramkuno*, 19 W. R., Cr., 28; *Sonaton Dass v. Gooroo Churn Dewan*, 21 W. R., Cr., 88.

A decision given on evidence which was in some parts discrepant, and about the credibility of which there might be considerable question, would not, even if the High Court thought the evidence doubtful, be a material error in a judicial proceeding within the meaning of this section.—*Huri Pershad, Petitioner*, 24 W. R., Cr., 60; and see *In the matter of Aurohiam*, I. L. R., 2 Mad., 38.

A Magistrate ought not himself to be a witness in a case in which he is sole judge of law and fact.—*Empress v. Donnelly*, I. L. R., 2 Calc., 405; *Queen v. Mukta Singh*, 4 B. L. R., Ap. Cr., 15. In the former case the following remarks were made by MARKBY, J.:—"In my opinion the evidence of the Judge being practically incapable of challenge or contradiction ought not to have been taken. Moreover, a Court of Appeal is not a check in the same way that Judges sitting together are a check upon each other . . . Upon this ground the conviction is bad." PRINSEP, J., however, was of opinion, that a conviction was not absolutely bad upon this ground, but that it was open to the Court to uphold the conviction, if it were of opinion that, after rejecting the Magistrate's evidence, there was other evidence sufficient, if believed, to support the conviction. See *Wood v. The Corporation of Calcutta*, I. L. R., 7 Calc., 322. But the mere circumstance that a trying Magistrate is the master of the complainant does not deprive the Magistrate of his jurisdiction, though it is expedient that the case should be referred to another Magistrate.—*In re Basapa*, I. L. R., 9 Bom., 172. See *Wood v. Corporation of Calcutta*, I. L. R., 7 Calc., 322; *Dimes v. Proprietors of the Grand Junction Canal*, 3 H. L. Cas., p. 793, and note to s. 555, *infra*.

Under the provisions of this section the High Court may exercise its powers of revision upon information in whatever way received.—*In re Aurohiam*, I. L. R., 2 Mad., 38. In that case it appeared that, in the course of a serious riot, one S. was killed by a shot from a gun. The first prisoner and others were charged with murder. The Sessions Judge, believing the statement of the first prisoner and his witnesses that he had fired in self-defence, acquitted him of the charge. Upon a petition presented by the widow of the accused praying

the Court to exercise their powers of revision, the Court held, that it had jurisdiction under s. 297 of Act X of 1872. See *In the matter of Hardeo*, I. L. R., 1 All., 139. Ch. XXXII s. 439

The Court can deal by way of revision with the case of a prisoner who does not appeal, and is authorized to pass such 'order,' sentence or judgment as it thinks fit.—*Queen v. Jaffir Ali*, 19 W. R., Cr., 57.

Although the Code of Criminal Procedure gives no right to the heir, devisee, executor, or any other representative of a deceased convict to lodge an appeal or continue an appeal already lodged, the High Court may call for the record of the case under s. 423 with a view to revision and rectification, and may make such order thereon as it may consider just.—*Empress v. Dongaji Andaji*, I. L. R., 2 Bom., 564. See notes to s. 243, *supra*.

In *In the matter of Aurohiam*, I. L. R., 2 Mad., 38, the Madras High Court held, that it was not intended by the Legislature that the powers given by cl. 1 of s. 297, Criminal Procedure Code, should be exercised only in particular instances of error, and in the particular manner given in the succeeding clauses which are merely intended to show the particular course which may be taken in those particular instances of error. It also held, that it was not a ground for revision by the High Court that all the evidence for the prosecution which might have been brought before the Sessions Judge had not been brought before him.

The High Court has the power to order not only the accused to be tried, but also that he be committed for trial.—*Prosunna Coomar Ghose*, 19 W. R., Cr., 56; see also *Lukhy Nurain Nagory*, 24 W. R., Cr., 24. It has power also to annul what is illegal while passing a legal sentence,—e. g., to set aside so much of a sentence which imposes a daily fine in addition to a substantive fine.—*Kristodhona Dutt v. The Chairman of the Municipal Corporation of Calcutta*, 25 W. R., Cr., 6.

A Divisional Bench of the High Court has no power under this section to review its judgment pronounced in a criminal case.—*Empress v. Fox*, I. L. R., 10 Bom. (F. B.), 176; *Empress v. Durga Charan*, I. L. R., 7 All., 672. See *In re Abdul Sobhan*, I. L. R., 8 Calc., 63.

Under the old Code it was held that, in considering whether a person has been improperly discharged by a Magistrate, the High Court is not restricted to an error of law only, but may order a trial where *prima facie* the evidence establishes a case against the accused as to which he should be required to enter in his defence.—*In re Troylokhyanath Mitter*, 1 C. L. R., 83, where *In re Mohesh Mistree*, I. L. R., 1 Calc., 282, was dissented from on the ground that it was beyond the power of the Court to make the order made thereon. See *Lachman v. Juala*, I. L. R., 5 All., 161.

The words "in case of any proceeding" in the present Code have been held to be comprehensive enough to cover a proceeding in which an accused person has been discharged. Accordingly, under ss. 439 and 423 read together, a High Court has power, if it considers that an accused person has been improperly discharged, to order him to be committed.—*Empress v. Ram Lall Singh*, I. L. R., 6 All., 40. The last paragraph of the section, it will be observed, does not allow a High Court to convert a finding of acquittal into one of conviction, but it does not deprive that Court of the power of revision in case of an acquittal, and the existence of that power was recognised in the case last quoted. In a subsequent case in the same Court, upon an application by Government for revision of an order of acquittal, the Court stated that it was not an inflexible rule that where Government on the one side or the accused on the other had a right of appeal and did not exercise it, the powers of the Court under s. 439 of the Criminal Procedure Code could not be exercised, but that in such cases these powers should be sparingly used, and save in very exceptional cases, not at all in reference to questions of fact.—*Empress v. Ala Bakhsh*, I. L. R., 6 All., 484. See *Empress v. Lalji*, Panjab Record, 1883, p. 41. It is, however, the rule of the Calcutta Court not to interfere in revision with an acquittal.—*In re Municipal Committee of Dacca v. Hingoo Ray*, I. L. R., 8 Calc., 895. See notes to ss. 417 and 435, *supra*.

Where a prisoner was charged with giving false evidence in a judicial proceeding, and being found guilty under s. 193 of the Indian Penal Code was sentenced to pay a fine of Rs. 100, or in default to be imprisoned, the High Court annulled the sentence under s. 297, cl. 6, of the former Criminal Procedure Code

Ch. XXXII (X of 1872), on the ground that it was imperative in such a case that *some* term of imprisonment should be awarded.—*Empress v. Khodai Singh*, 3 C. L. R., 527.

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A sentence, where there are a number of prisoners, must impose a specific fine on each prisoner. The High Court of Madras annulled a sentence imposing a fine of Rs. 300 on the prisoners individually and collectively.—*Proceedings*, 11th Nov. 1869, 5 Mad. H. C. R., Appx., v.

When a prisoner is convicted by a subordinate tribunal of an offence within his jurisdiction, but the evidence discloses an offence of a graver character beyond the jurisdiction of that tribunal, the High Court may quash the conviction and sentence for the minor offence, and direct a trial before a tribunal having jurisdiction over the greater. Whether it would do so or not, is a question not of law but of expediency upon the facts of a particular case.—*Mad. H. C. Pro.*, 1st May 1872, *Weir*, p. 35.

Criminal proceedings are bad unless they are conducted in the manner prescribed by law, and if they are substantially bad in themselves, the defect will not be cured by any waiver or consent of the accused.—*Queen v. Bholanath Sein*, I. L. R., 2 Calc., 23; (S. C.) 25 W. R., Cr., 57. See s. 537, *infra*.

The High Court may interfere with a conviction notwithstanding that the sentence has expired.—*Empress v. Sinha*, I. L. R., 7 All., 135. In many cases a man's status is altered by a conviction (as in convictions under Chaps. XII and XVII of the Penal Code), and his prospect of future employment may depend upon the existence or annulment of the conviction.

The High Court has no power, either by way of appeal or revision, to interfere with a sentence passed by the Superintendent of the Tributary Mehals when exercising jurisdiction over offences committed in Mohurbunj, a place not situated within the limits of British India.—*Empress v. Hurro Kote*, I. L. R., 9 Calc., 288; see *Empress v. Keshub Mahajan*, I. L. R., 8 Calc., 985; *Hursu Mahapatro v. Dinabundhu Patro*, I. L. R., 7 Calc., 523.

Where a Magistrate wishes to show cause against a rule issued by the High Court, the proper course for him to adopt is to apply to the Legal Remembrancer to cause an appearance to be made for him in Court, and not to address the Registrar by letter.—*In re Hurro Soondery Chowdhraim*, I. L. R., 4 Calc., 20; (S. C.) 3 C. L. R., 93.

It has been held that it is the duty of lower Courts, where there is a conflict between different High Courts, to follow the concurrent decisions of the Court to which they are subordinate, and that they are not at liberty to adopt a contrary opinion expressed by another High Court.—*Korban Ally Mirdha v. Sharoda Proshad Aitch*, I. L. R., 10 Calc., 82.

The revisional powers under the section do not apply to interlocutory orders, by which no penalty is imposed on the accused, while the trial is still pending.—*Azim Khan v. Empress*, Punjab Record, 1885, p. 103.

Section 439, read with ss. 435 and 423 (c), *supra*, enables the Court to reverse an illegal order on an application under s. 135, *supra*.—*Ram Kala v. Ganda*, Punjab Record, 1885, p. 89.

When the High Court either (1) sentences on appeal a person who has been acquitted by a subordinate Court, or (2) passes in revision a sentence involving re-imprisonment on a person who has already completed the term of imprisonment awarded by a subordinate Court; if the accused person appears, the High Court will immediately, upon passing sentence of imprisonment, order the arrest of the convict, and a warrant will be issued in the usual form to the keeper of the common jail in Bombay, or to the officer in charge of some district jail (generally that of Thana); and immediate orders will thereupon be issued to the Sheriff for the conveyance of the convict to the place of imprisonment; if the accused person does not appear, the High Court's sentence or order will be sent to the Court by which the trial was had, and it will thereupon be the duty of such Court to carry into effect the sentence or order of the High Court in the same manner as if such sentence or order had been passed by itself.—*Bombay Gazette*, 7th May 1881.

The following rules under Act X of 1872 to provide for the due certifying and execution of orders of imprisonment in criminal cases are in force in Bombay:—

1. When a sentence on a prisoner is reversed or modified on appeal, a fresh warrant will be issued by the Appellate Court to the officer in charge of the jail for execution, and its order will be communicated to the lower Court for record.

2.* When an appeal is rejected or a sentence confirmed, an intimation to that effect will be sent to the officer in charge of the jail by the Appellate Court, and its order will be communicated to the lower Court for record. Ch. XXXII
secs.
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3. When a case is revised by the High Court, the Court or Magistrate to which the High Court certifies its order under s. 299 (442) of the Code of Criminal Procedure will proceed under that section to issue a fresh warrant or order to the jailor.

4. When a prisoner has applied to the High Court in revision to have the sentence passed on him revised, and the High Court rejects the application, intimation to that effect will be made direct to the Superintendent of the Jail.

5. In cases referred by the Court of Session for the confirmation of a sentence of death by the High Court, the High Court will send a copy of its order to the Court of Session, which will then issue warrants (*vide* Forms 46 and 47, page 290, High Court Circular Order Book) to the officer in charge of the jail, as provided in s. 301 (381) of the Code of Criminal Procedure.

6. In all cases in which a sentence or order is modified or reversed, whether on appeal or revision, a separate warrant should be issued as regards each prisoner whose sentence has been so modified or reversed. In revision cases, the Court to which the order is certified will issue the warrants as provided in para. 3.

7. In all cases the Superintendent of the Jail will acknowledge by letter the receipt of any warrant or order or intimation, and will inform the prisoner of the result of his appeal or application and report the fact in the letter.

8. In all cases in which a fresh warrant has been issued, whether in appeal or revision, the warrant should be returned to the Court issuing it when it has been fully executed.—*Bom. H. C. Cir.*, 62, *Gazette*, 1874, p. 557.

When the High Court calls on a Magistrate for the record of a case, which record has already been sent to the Sessions Court in appeal, the Magistrate should make a return accordingly to the writ.

When a case is called for at the same time both in appeal and by the High Court in revision, the Magistrate should comply with the order of the Court of Appeal and make a return accordingly to the writ of the High Court.—*Bom. H. C. Cir.*, 46a.

440. No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision : Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, paragraph two.

Optional with Court to hear parties. Compare Act X of 1872, s. 297, last paragraph. Under the preceding section no order can be made to the prejudice of the accused, unless he has had an opportunity of being heard, either personally or by pleader, in his own defence. See *Reg. v. Devamu*, I. L. R., 1 Bom., 64. Under s. 436, the accused is entitled to an opportunity of showing cause before an order can be made against him under this section. See *In re Nobin Kristo Mookerjee*, I. L. R., 10 Cal., 268.

Under s. 340, every person accused before any Criminal Court may of right be defended by a pleader. See notes to that section.

A private prosecutor is not allowed to appear on a reference to the High Court. See *Queen v. Ramjai Muzumdar*, 6 B. L. R., Apx., 46 ; *In the matter of Chandi Charan Chatterjee v. Chundra Kumar Ghose*, 5 B. L. R., Apx., 70.

441. When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks

Statement by Presidency Magistrate of grounds of his decision to be considered by High Court.

Ch. XXXIII material to the issue; and the Court shall consider such
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442-443 statement before overruling or setting aside the said decision or order.

Act IV of 1877, s. 182.

442. When a case is revised under this chapter by the High Court, it shall certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.

High Court's order to be certified to lower Court or Magistrate.
 Act X of 1872, s. 299, paras. 1 and 2. The rule as to appeals is different. Whenever a case is decided on appeal by the High Court under this chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and, if necessary, the record shall be amended in accordance therewith.
 —S. 425, *supra*.

PART VIII.

SPECIAL PROCEEDINGS.

CHAPTER XXXIII.

CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

443. No Magistrate, unless he is a Justice of the Peace, and (except in the case of a *District Magistrate* or [Act III of 1884, s. 3] Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject, shall inquire into or try any charge against an European British subject.

Magistrates who may inquire into and try charges against European British subjects.

Compare s. 72 (paras. 1 and 2) and s. 74 (para. 1) of Act X of 1872.
 For the definition of 'European British subject,' see s. 4 (*u*).

The provisions of this chapter relating to the kind of Court which shall have jurisdiction to inquire into a complaint and try a charge against an European British subject are not so much words taking away jurisdiction entirely as words which confer on the British subject a right to be tried by a certain class of Magistrates or Judges and by no other (see *In the matter of Quiros*, I. L. R., 6 Cal., 83; (S. C.) 6 C. L. R., 463), which right the Code enables him to give up. See s. 454, *infra*.

Section 111 provides that ss. 109 and 110, *supra* (as to security for good behaviour), shall not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874. Nothing in this section

applies to proceedings against European British subjects under s. 480, *infra*. In other respects the provisions of this Code, except as provided by this chapter, apply to European British subjects.—S. 463, *infra*. Ch. XXXIII
s. 444

To make out a plea to the jurisdiction of a Mofussil Court on the ground that the accused is a European British subject, it is necessary to prove not only legitimate descent but also nationality. Hearsay is not admissible to prove nationality.—*Mad. H. C. Pro.*, 6 *Mad. H. Cr. R.*, 7, *Weir*, p. 20.

The following opinion of the Officiating Advocate-General has been circulated by the Bengal Government for the information and guidance of Magistrates in Bengal :

I have come to the conclusion with considerable hesitation, that the words "inquire into or try any charge" in s. 443 of the Criminal Procedure Code, 1882, do apply to proceedings under s. 107. I think it is impossible for any one to give a confident opinion on the point, when it is a question arising upon language so obscure. No doubt the word "charge" is quite wide enough to include, and would, I think, ordinarily mean anything which could be made the subject of a charge so as to expose a person to the penalties or punishments provided by the Code, whether that charge was an act of omission or of an intention to commit an act, provided each was punishable. The difficulty arises when we come to s. 445, which appears to be intended to restore the jurisdiction taken away by s. 443 under certain restrictions, but employs different language, speaking only of an offence. It seems absurd that the jurisdiction should be restored when an offence is in question and withheld when an intention to offend is alleged. The terms used in s. 445 would therefore seem, on considering the scope of the Code, to be intended to cover the same ground as those used in s. 443. The question then arises, is the wider meaning to be given to "offence" or the narrow meaning to "charge"? No doubt "offence" is defined, while "charge" is not, but the definition allows the real meaning to be gathered from the context. I can see no reason why, when a European is charged with an intention of committing an offence, when his mind has to be divined into and its inclination inferred from acts generally of a doubtful character, the Legislature should have entrusted the inquiry to a class of officers less qualified to judge of such intentions, while prohibiting that class from judging with regard to accomplished facts. I should therefore conclude that "offence" in s. 445 is intended to correspond with "charge" in s. 443, and means any matter laid to the charge of a person which, upon conviction, renders him punishable. The matter dealt with in s. 107 is, I think, one for which a punishment is provided. In the first place, I think it must be considered a punishment to have to find security; and if security is not forthcoming, the defaulter is to be committed to prison. In the second place, the commitment to prison is itself a punishment for the original offence of harbouring an unlawful intent, and is not merely a punishment for default in furnishing security when ordered by a competent authority so to do. It is really on the same footing as a fine with imprisonment in default of payment. I therefore think that the matter is one for which punishment is provided, although such punishment is only preventive in its object.

It is also to be borne in mind that the only process to compel appearance and the only inquiry or trial are with respect to the necessity for requiring security; and that, if that matter is not beyond the jurisdiction of a Native Magistrate, the subsequent imprisonment, which follows without further trial, is within his competence; so that the Native Magistrate could imprison a European for a year under s. 123; while under s. 446 he could not sentence him for an accomplished crime to more than three months' imprisonment; the imprisonment under s. 446 being the direct punishment, while under s. 123 it is the virtual punishment, although not a sentence of the Court. I think that such a result as this was not intended, and therefore I am of opinion that a Native Magistrate cannot inquire into or try cases under s. 107.

(Sd.) A. PHILLIPS.

444. No Judge presiding in a Court of Session *except the Sessions Judge* (Act III of 1884, s. 4) shall exercise jurisdiction over an European British subject unless he himself Sessions Judge to be an European British subject.

Ch. XXXIII is an European British subject ; and, if he is an Assistant Sessions Judge, unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government.

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Assistant Sessions Judge to have held office for three years and to be specially empowered.

Compare s. 72 (para. 1) and s. 76 (para. 1) of Act X of 1872.

445. Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence if committed by another person :

Provided that, if he issues any process for the purpose of compelling the appearance of an European British subject accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

Compare ss. 73 and 438 of Act X of 1872.

The Magistrates who are ordinarily competent to take cognizance of offences are Presidency Magistrates, District Magistrates, Subdivisional Magistrates, and any other Magistrate specially empowered by the District Magistrate or Local Government in that behalf. See s. 191, *supra*, and s. 480, *infra*.

446. Notwithstanding anything contained in section 32 or section 34, no Magistrate other than a *District Magistrate* or [Act III of 1884, s. 5] Presidency Magistrate shall pass any sentence on an European British subject other than imprisonment for a term which may extend to three months, or fine which may extend to one thousand rupees, or both.

"And a District Magistrate shall not pass any such sentence other than imprisonment for a term which may extend to six months, or fine which may extend to two thousand rupees, or both." [Act III of 1884, s. 5.]

Compare s. 74, para. 2, of Act X of 1872.

Sections 32 and 34 deal with the sentences which Magistrates may pass. The former section gives a Magistrate power to pass the following sentences,—*viz.* : imprisonment for a term not exceeding two years including such solitary confinement as is authorized by law ; fine not exceeding one thousand rupees and whipping. That power is now curtailed in the case of European British subjects. See *Empress v. Berril*, I. L. R., 4 All., 141.

A Magistrate is not bound to ask an accused person categorically whether he claims his rights as a European British subject, nor to explain his rights to him as such.—*Tobin v. Empress*, Panjab Rec., 1885, p. 11. See s. 454, *post*.

447. When an European British subject is accused of an offence before a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session, or, in the case of a Presidency Magistrate, to the High Court. Ch. XXXIII
s. 447

When commitment is to be to Court of Session and when to High Court.

When the offence which appears to have been committed is punishable with death or with transportation for life, the commitment shall be to the High Court.

Compare s. 75 (para. 1), s. 438 (para. 2), of Act X of 1872. As to the last paragraph, see s. 12, para. 1, of Act XI of 1874.

'High Court' means, in reference to proceedings against European British subjects or persons charged jointly with European British subjects (s. 214, *supra*), the High Courts of Judicature at Fort William, Madras, and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Panjab, and the Recorder of Rangoon.—Section 4 (i), *supra*. Section 185, *supra*, also provides that in British Burmah, when the offender is an European British subject, the Recorder of Rangoon, and in all other cases the Judicial Commissioner, shall, for the purposes of this section, be deemed to be the High Court.

Where a person outside the Presidency-towns is accused of having committed an offence conjointly with an European British subject who is about to be committed for trial, or to be tried before the High Court on a similar charge arising out of the same transaction, and the Magistrate finds there are grounds for committing the accused for trial, the commitment must be to the High Court and not to the Court of Session.—Section 214, *supra*.

Instructions as to European British subjects committed to the High Court.—

(a.) Magistrates making commitments to the High Court in its original criminal jurisdiction should promptly send the records of cases to the Clerk of the Crown, and not delay doing so until the commencement of the Sessions at which the cases are to be tried. The practice of so delaying causes great inconvenience to all concerned, and deprives the Judge generally of the opportunity, which he ought to have, of looking over the depositions of the witnesses before the case goes to trial.

(b.) A copy of the warrant of commitment should always form part of the record sent to the Clerk of the Crown.

(c.) All witnesses should be bound, in the usual form, to attend at the court-house on a day specified, which should be the *first day of the Sessions* for which the prisoner is committed; and this should be the next Sessions after the commitment, if there is a sufficient interval of time between the commitment and the next Sessions; and if not, then the next following Sessions. Much inconvenience is often occasioned by and to witnesses from the Mofussil in consequence of their want of information as to the means of getting quarters, if they are poor and strangers, and as to the means of obtaining their expenses. They should be informed that the Commissioner of the Police of Calcutta (and not the Clerk of the Crown) has charge of these matters.

(d.) In cases where Magistrates require advice or direction (except as to what merely concerns the office of Clerk of the Crown), they should apply direct to the Solicitor to Government.—*Calc. H. C. C. O. No. 5 of 6th May 1864, Wilkins*, pp. 125, 126.

• *Warrants to be sent with European British subjects committed to the High Court.*—(a.) The warrant of commitment in the following form should be directed to the Superintendent of the Presidency Jail in Calcutta:—

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To the Superintendent of the Presidency Jail.

Whereas of is (or are) charged with (state offence) and has (or have) been committed to take his (or their) trial before the High Court:

You are hereby required to receive the said into your custody and to have the body (or bodies) of the said before the said High Court for trial at the Sessions of the Court next ensuing the date hereof.

Dated the

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(Signature.)

(Office and powers.)

(b.) The warrant of commitment ought always to be delivered to the officer in whose custody the prisoner is sent, in order that it may be made over with the prisoner to the Superintendent of the Presidency Jail as his authority to receive and detain the prisoner. Failure of justice has been caused in many cases through neglect to adopt this course, and the Court trust that Magistrates will be careful as well in this respect as in taking proper steps to ensure the attendance of the necessary witnesses at the Sessions. In addition to the warrant of commitment, a warrant should be directed to the Police-officer in charge of the prisoner, and should direct such officer to take the prisoner and deliver him to the Superintendent of the Presidency Jail. Such warrant may be in the following form:—

FORM OF WARRANT.

To (the name of the officer or officers sent in charge of the prisoner) and to all other Peace Officers of the Empress of India in the Provinces and Districts of Bengal, Behar, and Orissa, and places subordinate thereto, whom this may concern.

WHEREAS of is charged with (state the offence as in warrant of commitment), and has been committed by me, the undersigned Magistrate, to the Superintendent of the Presidency Jail for trial before the High Court of Judicature at Fort William in Bengal, you are therefore hereby required to receive the said into your custody, and to deliver him into the custody of the Superintendent of the Presidency Jail at Calcutta, to be there safely kept until he shall be thence delivered by due course of law.

Dated the day of

—Calc. H. C. C. O. No. 8 of 6th August 1866, Wilkins, pp. 126, 127.

The following rules are in force in the Panjab:—

"Any Magistrate or Justice of the Peace committing a European British subject for trial before the Chief Court of the Panjab shall, in conformity with ss. 20 and 27 of Act IV of 1866, direct a warrant to some jailor or other officer having authority to receive and keep prisoners, and the same shall be in the form (O) given in the second Schedule to the Code of Criminal Procedure, and referred to in s. 303 (384) thereof.

2. "Whenever the Chief Court shall have given notice of its intention to hold sittings at any place, whether at the seat of Government of the Panjab, or elsewhere, in the exercise of the original criminal jurisdiction, the Deputy Commissioner of the District, within which such place may be situate, shall cause to be brought before the Chief Court at its sittings all such accused persons as may be in the custody of the jailor or other officer having authority in such district to receive and keep prisoners committed for trial before the Chief Court, unless the Court in any particular case shall otherwise order.

3. "When the accused person is brought before the Court, according to the requirements of s. 237 (271) of the Code of Criminal Procedure, he shall remain, until after the trial, in the custody of such person as the Deputy Commissioner of the District may appoint for his custody.

4. "Every person committed for trial before the Chief Court, who shall be delivered by the jailor or other officer having authority to receive and keep prisoners to the Deputy Commissioner of the District for the purpose of being brought before the Chief Court, in conformity with the said s. 237 (271) of the Code of Criminal Procedure, shall be deemed to have been delivered from jail in due course of law.

5. "All persons committed or bailed for trial at any time other than during the sittings of the Court shall be tried at the sittings held next after the date of the delivery of the charge to the Registrar, unless the Court shall otherwise order;

and all persons committed or bailed during any sittings of the Court shall be tried at such sittings unless the Court shall otherwise order. Ch. XXXIII
s. 448

6. "As soon as notice shall have been given by the Chief Court of the place of trial of any European British subject committed for trial before it, the committing officer shall send intimation to the officer in charge of the jail, to which the accused is to be committed for intermediate custody, of the probable time of arrival of the accused. Notice should at the same time be sent to the Deputy Commissioner of the District within which the place of trial may be situate.

7. "At all trials before the Chief Court some proof must be forthcoming that the accused is a European British subject and amenable to the jurisdiction of the Court. For this purpose the committing Magistrate should forward some evidence in proof of the status of the accused, unless the accused has made a statement before the Magistrate to the effect that he is a European British subject. The fullest proof is not required as if the question were in issue."—*Smyth*, p. 100.

The following rules regarding the commitment of Europeans and others to the High Court Sessions have been published in Bombay:—

(i.) It shall be the duty of committing Magistrates, at the time of commitment, to take recognizances from prosecutors and witnesses for the prosecution whose attendance may be necessary at the trial, binding them to be present at the High Court on the first day of the particular Sessions to which the case is committed.

(ii.) The Sessions will commence on the following dates:—

- 1st.—The 2nd of February,
- 2nd.—The 10th of April,
- 3rd.—The 27th of June,
- 4th.—The 10th of September,
- 5th.—The 20th of November,

unless any such date shall fall on Sunday, when the Sessions will begin on the following Monday.

(iii.) Witnesses for the defence shall, under s. 358 (216) of the Code of Criminal Procedure, be summoned by the Magistrate to attend at the High Court on the first day of the Sessions to which the accused is committed.

(iv.) It shall further be the duty of the Magistrate to forward to the Clerk of the Crown, with the record of his proceedings, a list of the witnesses for the prosecution from whom recognizances have been taken, and also of the witnesses for the defence to whom summonses have been issued, with a note of the date on which such witnesses have been required to be in attendance at the High Court.

(v.) Should the Magistrate in his discretion consent to summon other witnesses on behalf of the accused at any time subsequent to the commitment, he shall transmit to the Clerk of the Crown a supplemental list without delay.

(vi.) It shall further be the duty of the Magistrate, upon receiving from the Clerk of the Crown a letter stating the day on which the Criminal Sessions are to be held and requesting him to cause the witnesses to be served with notices to attend on the day named, to cause the witnesses to be served with such notices in sufficient time to ensure their attendance on that day, and to take any other proceedings that may be necessary for the purpose.

(vii.) When an accused person is sent to Bombay in custody to await his trial at the Criminal Sessions of the High Court, the warrant for his detention shall be addressed to the Superintendent of the House of Correction.—*Bombay Gazette*, 1879, pp. 471, 475.

As to the trial of European British subjects in Travancore and Cochin, see *Gazette of India*, 1875, p. 404.

448. Where any person committed to the High Court under section 447 is charged with several offences of which one is punishable with death or transportation for life and the others with a less punishment, and the High Court considers that he should not

Trial of offences of which one is, and the others are not, punishable with death or transportation for life.

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be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offences.

This corresponds with s. 12, para. 2, of Act XI of 1874.

449. Notwithstanding anything contained in section 31, no Court of Sessions shall pass on any European British subject any sentence other than a sentence of imprisonment for a term which may extend to one year, or fine, or both.

Sentences which may be passed by Court of Session.

If, at any time after the commitment and before signing judgment, the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

Procedure when Sessions Judge finds his powers inadequate.

Compare s. 76 of Act X of 1872.

The second paragraph of that section empowered the Court to transfer the case at any stage of the proceedings. Now the transfer must be after commitment and before signing judgment.

As to the procedure to be adopted when a commitment to the High Court is made under this section, see ss. 217 and 218, *supra*.

450. *If the Judge of the Sessions Division within which the offence is ordinarily triable is not an European British subject, the case shall be reported by the committing Magistrate for the orders of the highest Court of criminal appeal for the province within which such division is situate.*

Procedure when Sessions Judge is not an European British subject.

In British Burmah the Court of the Recorder of Rangoon shall, for the purposes of this section, be deemed to be the highest Court of Criminal Appeal.

This section has been repealed by Act III of 1884, s. 6.

“ 451. (1) In trials of European British subjects before a High Court or Court of Session, if before the first juror is called and accepted, or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, the trial shall be by a jury of which not less than half the number shall be Europeans or Americans or both Europeans and Americans.

Jury or assessors before High Court or Court of Session.

“(2) When any such trial before a Court of Session would in the ordinary course be with the aid of assessors, the European British subject accused, or, where there are several European British subjects accused, all of them jointly, may, instead of claiming to be tried by a mixed jury under sub-section (1), require that not less than half the number of the assessors shall be Europeans or Americans or both Europeans and Americans.” [Act III of 1884, s. 8.]

See s. 78, para. 2, of Act X of 1872, and s. 35 of Act X of 1875.

See s. 269 as amended by Act X of 1886, s. 9, *supra*, and s. 460, *post*.

As to the number of persons of which a jury may consist, see note to s. 274, *supra*.

In the case of the trial of a person not being a European or American, a majority of the jury, if he so desires it, shall consist of persons who are neither Europeans nor Americans.—Section 275, *supra*.

451A. (1) In trials of European British subjects before a District Magistrate, any such subject may, in a summons case before he is heard in his defence under section 244, or in a warrant case before he enters on his defence under section 256, claim that the trial shall be by a jury composed in manner prescribed by section 451.

Right of European
British subject to claim
jury before District
Magistrate.

“(2) If a claim is made under sub-section (1) in a summons case at the time when the Magistrate proceeds under section 244 to hear the accused, or in a warrant case at the time when the Magistrate calls upon the accused under section 256 to enter upon the defence, the Magistrate shall forthwith issue the necessary orders for the trial by a jury as aforesaid.

“(3) If such a claim is made at an earlier stage of the proceedings, the Magistrate shall issue such orders whenever it appears to him from the evidence recorded that there will be a sufficient case to go before a jury.

“(4) In every such case the Magistrate shall, notwithstanding anything contained in section 242, before issuing any orders as aforesaid, frame a formal charge.

“(5) The provisions of sections 211, 216, 217, 219, and 220 shall, so far as may be, apply for the purpose of securing the attendance of the complainant, the accused, and the witnesses at every trial to be held under this section.

“(6) The provisions of this Code relating to the procedure in a trial by jury before a Court of Session shall, as nearly as may be, apply to every trial under this section as if the District Magistrate were a Sessions Judge and the accused had been committed to his Court for trial.

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451B-452

"(7) All Courts may construe any of the provisions referred to in sub-section (5) or sub-section (6), in so far as they are made applicable by that sub-section, with such verbal alterations not affecting the substance as may be necessary or proper to adapt the same to the matter before them.

"(8) Nothing in this section shall affect the power of the Magistrate to commit an accused person for trial under section 347 or section 447."

[Act III of 1884, s. 8.]

"451B. (1) If an accused person claims to be tried by jury under section 451A, and in the opinion of the District Magistrate there is reason to believe that a jury composed in manner prescribed by section 451 cannot be constituted for the trial before himself, or cannot be so constituted without an amount of delay, expense or inconvenience which under the circumstances of the case would be unreasonable, he may, instead of issuing orders for the trial before himself under section 451A, transfer the case for trial to such other District Magistrate or to such Sessions Judge as the High Court may, from time to time, by rules made by it in this behalf and approved by the Local Government, or by special order, direct.

"(2) When a case is transferred under this section to a Sessions Judge or District Magistrate, he shall with all convenient speed try it with the same powers (including the power of commitment) and according to the same procedure as if he were a District Magistrate acting under section 451A."

[Act III of 1884, s. 8.]

452. In any case in which an European British subject is accused jointly with a person not being a European British subject, and such European British subject is committed for trial before a High Court or Court of Session, such subject and person may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately :

Provided that, if the European British subject requires under section 451 to be tried by a mixed jury, or by a mixed set of assessors, and the person not being an European British subject requires that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of Chapter XXIII.

This section corresponds with ss. 36 and 37 of Act X of 1875, except that it applies not only to High Courts, but also to Courts of Session. Ch. XXXIII
secs.
453-454

It has been held, that a prisoner not being an European British subject, who is not charged jointly with an European British subject, is not entitled to be tried by a jury of which at least five persons shall not be Europeans or Americans.—*Reg. v. Lalubhai Gopaldass*, I. L. R., 1 Bom., 232.

See s. 461, *infra*.

453. When any person claims to be dealt with as an European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such

Procedure on claim of person to be dealt with as European British subject.

Magistrate shall inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate and appeals from such conviction, the burden of proving that the Magistrate's said decision was wrong shall lie upon him.

When any such person is committed by the Magistrate for trial before the Court of Session, and such person before such Court claims to be dealt with as an European British subject, such Court shall, after such further inquiry, if any, as it thinks fit, decide whether he is or is not an European British subject, and shall deal with him accordingly. If he is convicted by such Court and appeals from such conviction, the burden of proving that the Court's said decision was wrong shall lie upon him.

When the Court before which any person is tried decides that he is not an European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

As to the first and third paragraphs of this section, compare s. 83 of Act X of 1872.

There appears to be no appeal from an order deciding that an accused person is not an European British subject, apart from its being a ground of appeal from a conviction after such order has been made.

An accused person ought to have an opportunity afforded of pleading that he is an European British subject. A mere statement made by a prisoner after the trial has been completed cannot be acted upon.—*Clark v. Beane*, 5 W. R., Cr., 53. See next section.

When an accused claims to be dealt with as a European British subject, the Magistrate must decide that point before going into the case.—*Empress v. Berrill*, I. L. R., 4 All., 141.

454. If an European British subject does not claim to

Failure to plead be dealt with as such by the Magistrate status a waiver. before whom he is tried or by whom he is

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committed, or if when such claim has been made before, and disallowed by, the committing Magistrate, it is not again made before the Court to which such subject is committed, he shall be held to have relinquished his right to be dealt with as such European British subject, and shall not assert it in any subsequent stage of the same case.

Unless the Magistrate has reason to believe that any person brought before him is not an European British subject, the Magistrate shall ask such person whether he is such a subject or not.

Compare s. 84 of Act X of 1872.

The provision that if, when a claim has been made before and disallowed by the committing Magistrate, it is not again made before the Court to which the accused has been committed, the accused shall be deemed to have relinquished his right, is new.

Before an European British subject, it has been held, can be considered to have waived his privilege conferred upon him by this chapter, it must appear that his rights have been distinctly made known to him, and that he has been enabled to exercise his choice and judgment whether he would or would not claim such right.—*In re Quiros*, I. L. R., 6 Calc., 83; (S. C.) 6 C. L. R., 463. See *In re Foy*, Tay. and B., 226; *Reg v. Bholanath Sen*, I. L. R., 2 Calc., 23. This waiver of privilege under this section must be an absolute giving up all rights with reference to this chapter which a European British subject has, and the words 'dealt with as such before the Magistrate' mean everything contained in the chapter—that is to say, the tribunal having cognizance of the case, the procedure, and also the punishment to which the accused would be liable.—*In the matter of Quiros*, I. L. R., 6 Calc., 83; (S. C.) 6 C. L. R., 463, *per* JACKSON, J. There, Quiros and others, who were all European British subjects, were charged, with rioting and violence, before the Assistant Magistrate vested with the powers of a Magistrate of the second class only. The offences being triable under s. 72 of Act X of 1872 only by a Magistrate of the first class, who was also a Justice of the Peace, the accused were asked if they had any objection to being tried by the Assistant Magistrate. Each of the accused said he had no objection, and the trial accordingly proceeded, and all were found guilty and convicted. The High Court quashed the convictions. JACKSON, J., said:—"In the case before us, for anything that appears to the contrary, the question put to the accused may simply have been whether they had any personal objection to Mr. Casperz as Magistrate to try them. The answer naturally would be, 'We have no objection to be tried by Mr. Casperz.' But if the question had been, 'You stand here as European British subjects which I know you to be, and as such British subjects you have the right to claim that you should not be tried, except by Magistrates of the first class, to which class I do not belong. Do you claim that right or not?'—the answers might have been quite different."

The following circular has been published by the Bombay High Court:—

If the Magistrate know that the prisoner is a European British subject, it is his duty, whether the prisoner claims exemption or not, to abstain from further proceedings against him as a Magistrate. If, without any actual knowledge on the subject, the Magistrate have reason to suppose that the prisoner is such a British subject, it is the Magistrate's duty to ascertain from him whether he alleges or denies that he is one; and if he alleges that he is, to give him every facility, by allowing him, and otherwise, time for proving that he is, the burden of such proof being on him. A Magistrate will not be justified, if he has reason to suppose that a prisoner is a European British subject, in proceeding against him as if he were not one, without first giving him a distinct opportunity of pleading that he is one. If he do not so plead, or be not able, upon time being allowed him for that purpose, to adduce any satisfactory proof of his being a European British subject, the Magistrate will be quite warranted in proceeding against him. If he do so plead and

give proof, or produce documents which, although not amounting to full legal proof of his status, satisfy the Court that he is really a European British subject, the Magistrate should, without putting the prisoner fully to complete his proof by strict legal evidence, take up the case as a Justice of the Peace, and send it up to the High Court, taking care to record distinctly the statement made by the prisoner that he is a British subject of lawful European descent.—*Bom. H. C. Cir.*, 39.

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The Magistrate ought to inquire whether he has jurisdiction or not, if there is any doubt on the point, for if he has no jurisdiction, and has the knowledge or means of knowledge of his want of jurisdiction, he is liable as a trespasser, if he acts.—*In re Foy*, Tay, and Bell, 219. See s. 534, *infra*. See also *Tobin v. Empress*, Panjab Rec., 1885, p. 11.

455. Where a person who is not an European British subject is dealt with as such under this chapter, and does not object, the inquiry, commitment, trial or sentence (as the case may be) shall not, by reason of such dealing, be invalid.

See s. 85 of Act X of 1872.

456. When any European British subject is unlawfully detained in custody by any person, such European British subject or any person on his behalf may apply to the High Court which would have jurisdiction over such European British subject in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

This section corresponds with s. 81, para. 1, cl. 1, of Act X of 1872.

It only applies in the case of unlawful detention of European British subjects. See *Queen v. Gholam Ismail*, I. L. R., 1 All. (F. B.), 1. In that case certain natives of India had been tried and acquitted, but an appeal having been preferred against the judgment of acquittal to the High Court, they were arrested by the police, who brought them before the Magistrate, and the Magistrate illegally directed that they should be detained in custody, pending the decision of the appeal. A majority of the High Court at Allahabad held, that the High Court had no power as a Court of Revision to interfere with the order on the ground that it was not a judicial proceeding. TURNER, Offg. C. J., said :—"To European British subjects, and to such persons only, the 81st section (of Act X of 1872) accords the privilege, if they are detained in custody, and consider their detention illegal, of applying to the High Court."

Within the limit of the ordinary original civil jurisdiction of the High Court, any person, whether an European British subject or not, if illegally or improperly detained in public or private custody within such limits, may be set at liberty by the High Court.—S. 491, *infra*.

Section 8 of Act XXI of 1819 (Foreign Jurisdiction and Extradition Act) provides that the law for the time being in British India relating to offences and to criminal procedure shall extend to all British subjects, whether European or Native, in the dominions of Princes and States in India in alliance with Her Majesty. *This Code, as amended by Act III of 1884, is thus by virtue of that section extended to all such British subjects.—*Empress v. Edwards*, I. L. R., 9 Bom., 333. See *Empress v. Morton*, I. L. R., 9 Bom. (F. B.), 288, and s. 458, *infra*.

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457. The High Court, if it thinks fit, may, before issuing such order, inquire, on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance, and, when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

Procedure on such application.

This section corresponds with s. 81, para. 1, cl. 2, of Act X of 1872.

458. The High Court may issue such orders throughout the territories within the local limits of its appellate criminal jurisdiction, and such other territories as the Governor General in Council may direct.

Territories throughout which High Court may issue such orders.

This section corresponds with s. 81, para. 2, of Act X of 1872.

The following Notification, dated 23rd September 1874, No. 1203, has been issued by the Home Department: In exercise of the powers conferred by the 28th Victoria, cap. 15, s. 3, the Governor-General in Council is pleased to make the following orders:—

I.—Original and appellate criminal jurisdiction shall be hereafter exercised over European British subjects of Her Majesty by the several High Courts established at Madras and Bombay and in the North-Western Provinces of India, respectively, as below provided:

By the High Court at Madras in—

Coorg.

Upper Godaveri District of the Central Provinces.

By the High Court at Bombay in—

The Nagpur and Narbada Divisions of the Central Provinces.

The Chhattisgarh Division of the Central Provinces.

The Pargana of Manpur in Central India.

By the High Court of the North-Western Provinces in—

Oudh.

The Jabalpur Division of the Central Provinces.

The line of Railway from Allahabad to Jabalpur, and the lands and buildings appurtenant thereto other than the station at Satna.

Morar Cantonment, Ajmere, and British Mairwara.

II.—The line of Railway from Allahabad to Jabalpur, and the lands and buildings appurtenant thereto, shall be deemed to be part of the District of Allahabad for the purpose of trial by the Court of Sessions at Allahabad of offences cognizable by a Court of Session, and alleged to have been committed on the said line of Railway lands and buildings.

This notification cancels the notifications numbered and dated respectively as follows:

Home Department, No. 221, dated 10th January 1867.

" " No. 4919, dated 27th October 1869.

" " (Judicial), No. 880, dated 31st May 1871.

—*Gazette of India*, 1874, p. 484.

The following additional Notification, dated 23rd September 1874, No. 178J, has been issued by the Foreign Department: With reference to Notification, No. 1203 of this date, in the Home Department, the Governor-General in Council is pleased, in the exercise of the powers conferred by the 28th Victoria, cap. 15, s. 3, to make the following orders:

Original and appellate criminal jurisdiction over European British subjects of Her Majesty, being Christians, resident in the Native states, territories, and chiefships below named, shall, until the Governor-General in Council otherwise orders,

be exercised by the High Courts of Judicature established at Fort William, Madras, Ch. XXXIII Bombay, and in the North-Western Provinces, respectively, as follows : s. 458

I.—By the High Court at Fort William in—

| | |
|--|--|
| Manipur. | Sikkim. |
| Kuch Bihar. | Bhutan. |
| The States in the Khasia Hills. | Hill Tipperah. |
| The Katak Tributary Mahals. | Nepal. |
| The Tributary Mahals of Chutia Nagpur. | The Territories of Chiefs or Tribes adjoining the Bengal Frontier. |

II.—By the High Court at Madras in —

| | |
|-------------|---------------|
| Mysore. | Pudukottai. |
| Travancoro. | Banganapalle. |
| Cochin. | Sandur. |

III.—By the High Court at Bombay in—

| | | |
|--|---|---|
| The Haidarabad Assigned Districts. | Gwalior, Districts of | |
| Haidarabad excepting the Assigned Districts. | Muhammadgarh. | |
| Ali Morad's Territory in Upper Sindb. | Matwara. | |
| Kolhapur. | Rattau Mol. | |
| Sawant Wari. | Ali Rajpur. | |
| The Southern Mahratta State. | Jhabua. | |
| The Satara Jagirs. | Tonk, Districts of | |
| Jingira. | Pirawar. | |
| Suchin. | Nimbhera. | |
| Bandsa. | Seronji. | |
| Dharmpur. | Meywar. | |
| The States in the Rewa Kanta Agency. | Pertabghar. | |
| Pentli in the Ahmadnagar Collee- torate. | Marwar. | |
| The Territories of Chiefs or Tribes adjoining the Sindh Frontier. | Dungapur. | |
| Bhopal. | Banswara. | |
| Barwani. | Jhalawar. | |
| Dewas. | Serdhi. | |
| Dhar. | Jaisalmer. | |
| Indore excepting the District of Alampur in Bundelkund. | Amjhira | } With the several parganas subordinate thereto, in- cluded in the charge of Sindia's Sir Subah of Malwa. |
| Jobalt. | Agar | |
| Burwai. | Bug | |
| Kattiwara. | Diktan | |
| Jawar. | Mandisur | |
| Cambay. | Nimuch | |
| The Gaikwar's Territories. | Ujein | |
| The States in Kathiawar. | Sagor | |
| Kach. | Shujawulpur | |
| The States in the Pablanpur Agency. | Soukach | |
| The States in the Mahi Kanta Agency. | and | |
| Jaura. | Bhilsa | } With the several parga- nas subordinate there- to, which form part of Sindia's Sir Subah of Esanghar, |
| Kilchipur. | Ganj Baroda | |
| Narsinghar. | Malharghar | |
| Rajghar. | Maksudan- ghar | |
| Ratlam. | Jabra Patan, Districts of | |
| Sitaman. | Gangrar. | |
| Sillana. | Pach Pahar. | |
| | Darg. | |
| | The Feudatory States in the Central Provinces, viz : | |
| | Kalubandi or Karond. | |
| | Raigarh Bargarh. | |
| | Sarangarh. | |

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III.—By the High Court at Bombay in—

Patna.
Sonepur.
Rairaldol.
Bamra.
Sukti.
Kawarda.

Khairagarh.
Nandgaon.
Kondka or Chhuikhadan.
Kanka.
Basta.
Makrai.

IV.—By the High Court in the North-Western Provinces in—

Garwal.
Chirkhari.
Dholpur.
Bhurtpur.
Alwar.
Jeypur.
Keroli.
Tonk, with the exception of Pirawa,
Nimbhera, and Seronji.
Kotah.
Bundi.
Kishengarh.
Bikanir.
Shapura.
Rampur.
Gwalior, the whole of the State,
excepting the Sir Subahship of
Malwa and the districts under the
Sir Subahship of Esanghar enu-
merated above.
The Mairwara Perganas belonging
to Meywar and Marwar.
Bandelkand States and Chiefships.
Adjeypur.
Alipura.
Baoni.
Beronda.
Behat.
Behri.

Bhaisonda.
Bijawar.
Bijna.
Chatrapur.
Dhurwai.
Dhattiah.
Geranli.
Gaurihar.
Jigni.
Jassu.
Kamta Rigola.
Koti.
Kauniadhana.
Logasi.
Maihiri.
Nagod.
Naiangoan Rebnai.
Urcha.
Pahari Banka;
Pahara Chanbe.
Paldeo.
Panna.
Rewah.
Sohawul.
Samphar.
Surila.
Tiraon.
Tori Futtehpur.
Holkar's District of Alampur.

—*Gazette of India*, 1874, p. 485.

The following Notification, dated 23rd September 1874, No. 179J., has been issued by the Foreign Department: In exercise of the powers vested in him by s. 6 of Act XI of 1872, the Governor-General in Council is pleased to direct that all Justices of the Peace within the States, Territories, and Chiefships specified in the preceding notification shall commit for trial to the High Courts, respectively having jurisdiction under the said notification, such European British subjects, being Christians, as are required by Act X of 1872 to be committed to a High Court.—*Gazette of India*, 1874, p. 486.

The following additional notifications have been published:—

Foreign Department Notification, dated 23rd September 1874, No. 180J. In modification of Notifications, No. 2199G., dated 11th October 1872, and No. 396G., dated 14th February 1873, the Governor-General in Council is pleased to direct that the powers of a High Court within the lands described in the aforesaid notifications shall not be exercised by the Agent to the Governor-General in Rajputana in cases in which the accused are European British subjects, being Christians.—*Ibid*.

Foreign Department Notification, dated 23rd September 1874, No. 181J. In modification of Notification, No. 159J., dated 7th August 1873, the Governor-General in Council is pleased to direct that the powers of a High Court within the territories described in the aforesaid notification shall not be exercised by the Agent to the Governor-General in Central India in cases in which the accused are European British subjects, being Christians.—*Ibid*.

Foreign Department Notification, dated 18th December 1874, No. 215J. With reference to Notification, No. 178J., of the 23rd September 1874, the Governor-General in Council directs the addition of Savanur to the list of Native States, Territories and Chiefships in which the High Court at Bombay is authorized to exercise original and appellate criminal jurisdiction over European British subjects of Her Majesty, being Christians.—*Gazette of India*, 1874, p. 612. See *Empress v. Edwards*, I. L. R., 9 Bom., 333; *Empress v. Morton*, I. L. R., 9 Bom. (F. B.), 288, and *Ward v. Reg.*, I. L. R., 5 Mad., 33.

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459. Unless there is something repugnant in the context, all enactments heretofore or hereafter made by the Governor-General in Council, which confer on Magistrates or on the Court of Session, jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein.

Application of Acts
conferring jurisdiction
on Magistrates or
Courts of Session.

Nothing in this section shall be deemed to authorize any Court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on any European British subject, or to confer jurisdiction on any Magistrate or any Judge presiding in a Court of Session [Act III of 1884, s. 9], not being a Justice of the Peace.

This section corresponds with ss. 2 and 4 of Act XXII of 1870 (repealed—see Schedule I).

Where an European British subject was convicted by a single Judge of the High Court for supplying liquor without a license, an act made punishable by Madras Act, No. I of 1866, by a Magistrate, on a reference to a Bench consisting of three Judges of the same Court, the conviction was set aside as beyond the jurisdiction of the High Court.—*Reg. v. Donoghue*, 5 Mad. H. C. R., 277. In that case the learned Judges purposely abstained from expressing an opinion upon a question raised by the Crown Prosecutor as to the power of the Local Legislature to render European British subjects punishable by a Magistrate on summary conviction for an offence newly created by them.

In Madras, in a subsequent case it was held that a Magistrate, who was a Justice of the Peace, but not an European British subject, had no jurisdiction to try an European British subject for an offence punishable under a special law (*e. g.*, Act I of 1859, the Merchant Shipping Act, s. 83) notwithstanding that he might have jurisdiction under the special procedure prescribed in the special law.—*Mad. H. C. Pro.*, 18th Dec. 1873, *Weir*, p. 20.

460. In every case triable by jury or with the aid of assessors in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable and if such European or American so claims, be Europeans or Americans.

Jury for trial of Eu-
ropeans or Americans.

See s. 234, para. 1, cl. 2, of Act X of 1872.

Section 234 of Act X of 1872 provided that trials of Europeans (not being European British subjects) or Americans should be by jury. Under this section such trials may be either by jury or with the aid of assessors. See note to s. 451, *supra*.

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See s. 268, *ante*, p. 257, as to number of jurors fixed upon in the various Presidencies.

461. Whenever an European or American is charged before the Court of Sessions jointly with a person not an European or American, and in compliance with a claim made under section 460 is tried by a jury, or with the aid of a set of assessors, of which at least one-half consists of Europeans and Americans, the latter person shall, if he so claims, be tried separately.

Jury when European or American charged jointly with one of another race.

See s. 242 of Act X of 1872, and compare s. 452, *supra*, p. 406.

462. When a trial is to be held before the Court of Session in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section 451 or section 460, or before the Court of a District Magistrate or Sessions Judge proceeding under s. 451A or 451B [Act III of 1884, s. 10], the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinbefore prescribed, as many European and American jurors as are required for the trial.

Summoning and empanelling jurors under section 451 or 460.

The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons has been already summoned for trials by jury at that session.

From the whole number of persons returned, the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 276, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as practicable, has been obtained :

Provided that in any case in which the proper number of Europeans and Americans cannot otherwise be obtained, the Court may, in its discretion, for the purposes of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

The first three paragraphs of this section correspond with s. 408, paras. 1, 2, and 3, of Act X of 1872; the proviso, with the last clause of s. 406 of the same Act.

As to exemption of military officers in the Panjab, see note to s. 321, *ante*, p. 297.

463. Criminal proceedings against European British sub- Ch. XXXIV
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Conduct of criminal proceedings against European British subjects, &c.

jects, Europeans not being European British subjects and Americans, before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of this Code.

Compare s. 87 of Act X of 1872.

CHAPTER XXXIV.

LUNATICS.

464. When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall postpone further proceedings in the case.

See ss. 423 and 424, para. 3, of Act X of 1872, and s. 194 of Act IV of 1877.

This section, unlike the corresponding sections of the former Codes, applies specifically both to trials and inquiries.

If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; but in case of a Court other than a High Court, if such inquiry results in a commitment or a conviction, the proceedings must be forwarded with a report of the circumstances of the case to the High Court (s. 341, *supra*, p. 306). See *Empress v. Husen*, 1 L. R., 5 Bom., 262, and notes to s. 341, *supra*.

When an accused person is found to be insane before the completion of his trial, the Judge should postpone the trial and report the case to the Lieutenant-Governor instead of trying the accused when he is incapable of making his defence, and acquitting him on the ground that he committed the offence charged when he was incapable of knowing that he was doing wrong.—*Reg. v. Noorhkan Chowdry*, 1 W. R., Cr., 11.

The test of insanity is, whether at the time of committing the offence the prisoner knew he was doing wrong.—*Reg. v. Jago Mohun Malo*, 24 W. R., Cr., 5.

Act XXXVI of 1858 contains the following provisions as to wandering and dangerous lunatics:—

Section 4.—It shall be the duty of every Darogah or District Police-officer to apprehend and send to the Magistrate all persons found wandering at large within his district who are deemed to be lunatics, and all persons believed to be dangerous by reason of lunacy. Whenever any such person as aforesaid is brought before a Magistrate, the Magistrate, with the assistance of a medical officer, shall examine such person; and if the medical officer shall sign a certificate in the form A to the schedule to this Act, and the Magistrate shall be satisfied on personal examination or other proof that such person is a lunatic and a proper person to be detained

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s. 465 under care and treatment, he shall make an order for such lunatic to be received into the asylum established in the division in which the Magistrate's jurisdiction is situate, or if such lunatic is not a native of the country, or the circumstances of the case so require, into a lunatic asylum at the Presidency, and shall send the lunatic in suitable custody to the lunatic asylum mentioned in such order, provided that if any friend or relative of any lunatic, who is believed to be dangerous, shall undertake in writing that such lunatic shall be properly taken care of and shall be prevented from doing injury to himself or others, the Magistrate, instead of sending him to an asylum, may make him over to the care of such friend or relative: provided also, that if any such friend or relative shall desire that the lunatic shall be sent to a licensed asylum instead of the public asylum of the division, and shall engage in writing to the satisfaction of the Magistrate to pay the expenses which may be incurred for the lodging, maintenance, medicine, clothing and care of the lunatic in such asylum, the Magistrate may send the lunatic to the licensed asylum mentioned in the engagement.

Section 5.—If it shall appear to the Magistrate, on the report of a Police-officer or the information of any other person, that any person, within the limits of his jurisdiction, deemed to be a lunatic is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, the Magistrate may send for the supposed lunatic and summon such relative or other person as has or ought to have the charge of him, and if such relative or other person be legally bound to maintain the supposed lunatic, the Magistrate may make an order for such lunatic being properly cared for and treated, and if such relative or other person shall wilfully neglect to comply with the said order, may commit him to jail for a period not exceeding one month.

If there be no person legally bound to maintain the supposed lunatic, or if the Magistrate think fit so to do, he may proceed as prescribed in the last preceding section, and upon being satisfied in the manner aforesaid that the person deemed to be lunatic is a lunatic and a proper person to be detained under proper care and treatment, may make an order for his reception into such asylum as aforesaid. It shall be the duty of every Darogah or District Police-officer to report to the Magistrate every such case of neglect or cruel treatment as aforesaid which may come to his knowledge.

Section 18.—The word 'lunatic' as used in this Act means and includes every person of unsound mind and every person being an idiot.

The power with reference to lunatics conferred on a Local Government by Chap. XXXI, ss. 426 and 430 of Act X of 1872, was extended to the Commissioner in Sind.—*Bombay Gazette*, 1874, p. 312.

The Police Surgeon at Bombay is the medical officer to examine persons accused of offences before the Presidency Magistrates, and who appear to them to be of unsound mind and incapable of making their defence.—*Bombay Gazette*, 1877, p. 339.

The officer in medical charge of the Madras Penitentiary is the medical officer by whom persons accused before a Presidency Magistrate of offences, and appearing to such Magistrate to be of unsound mind and incapable of making their defence, are to be examined. And the lunatic asylum at Madras is the place in which persons so accused, and found to be of unsound mind and incapable of making their defence, are to be kept in safe custody pending the orders of the Government, if the offences of which they are accused are non-bailable, or if sufficient bail is not given.—*Madras Gazette*, 1878, p. 474.

Whenever an accused person appears, upon the medical evidence, to be of unsound mind and incapable of making a defence, the Court should stay further proceedings in the case. It cannot proceed to acquit the accused.—*Mad. H. C. Pro.*, 4th Sept. 1876, *Weir*, p. 43.

465. If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the jury or the Court with the aid of assessors shall, in the first instance,

Procedure in case of person committed before Court of Session or High Court being lunatic.

try the fact of such unsoundness and incapacity, and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed. Ch. XXXIV
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The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

This section corresponds with s. 425 of Act X of 1872 as amended by s. 39 of Act XI of 1874 and with s. 120 of Act X of 1875.

Those Acts provided that the Court should, in the first instance, try the fact of the soundness of mind or incapacity of the accused. This Act now provides that the jury or the Court with the aid of assessors shall, in the first instance, try the fact of the soundness or incapacity of the accused. This alteration is in accordance with the decision in the case of *Reg. v. Bheekoo Kalwar*, 10 B. L. R., Appx., 10.

In the case of *Reg. v. Doorjodhun Shamonto*, 19 W. R., Cr., 26, a Sessions Judge in his charge to the jury told them that in his judgment the accused was at the time of his trial exhibiting symptoms of unsoundness of mind, and he directed them to find whether the accused was insane at the time that he committed the offence. It was held, that the issue as to whether the accused was of unsound mind at the time of the trial and incapable of properly making his defence was a preliminary issue to that put by the Sessions Judge, and should have been first submitted to the jury.

466. Whenever an accused person is found to be of unsound mind and incapable of making

Release of lunatic
pending investigation
or trial.

his defence, the Magistrate or Court, as the case may be, if the case is one in which bail may be taken, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

If the case is one in which bail may not be taken, or if sufficient security is not given, the Magistrate or Court shall report the case to the

Custody of lunatic.

Local Government, and the Local Government may order the accused to be confined in a lunatic asylum or other suitable place of safe custody, and the Magistrate or Court shall give effect to such order.

See s. 426 of Act X of 1872, s. 121 of Act X of 1875, and s. 196 of Act IV of 1877.

Under this section security may be taken for the appearance of the accused either before the Magistrate or Court, or before such officer as the Magistrate or Court may appoint in that behalf. The section is silent as to the place of custody of a lunatic, pending the orders of the Local Government in cases in which sufficient security is not given and in non-bailable cases.

As to removal to England of a lunatic found to be such in India, see Stat. 14 and 15 Vict., cap. 81, ss. 1 and 2, and *In re Maltby*, L. R., 6 Q. B. D., 18.

The authority of the Criminal Court over an accused, declared under this section to be a lunatic, ceases on the lunatic being handed over to the Local Government, and it does not revive until the prisoner is sent back to the Magistrate under

Ch. XXXIV s. 473 on a certificate that he is capable of making his defence. See *Empress v. Joy Hari Kor*, I. L. R., 2 Cal., 356. A Magistrate has no power to release the lunatic on taking security in a non-bailable case.—*Ibid.*

When a Magistrate has reported a case to the Local Government, he ought not to strike off the case (*Queen v. Rughooa*, 6 W. R., Cr., 3), so that the inquiry may be resumed under the next section.

In the Panjab, references regarding lunatics under this section and ss. 471 to 475 should be addressed to Government for orders through Commissioners. See *Smyth*, p. 134.

Compare the procedure under s. 341, *supra*.

467. Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

When the accused has been released under section 466 and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

This section corresponds with s. 197 of Act IV of 1877. Compare s. 427 of Act X of 1872 and s. 122 of Act X of 1875.

468. If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be.

This section corresponds with s. 428 of Act X of 1872, s. 123 of Act X of 1875, and s. 198 of Act IV of 1877.

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which if he had been of sound mind would have been an offence, and that he was at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and,

if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be. Ch. XXXIV
s. 470

. Compare s. 424, paras. 1 and 2, of Act X of 1872, and s. 195 of Act IV of 1877. These sections of the repealed Acts applied only to cases exclusively triable by a Court of Session.

Whenever a Magistrate sends for trial before the Court of Session an accused person regarding whose sanity at the time of committing the offence he entertains any doubt, he must at the same time inform the jail authorities of the supposed state of the accused, in order that he may be placed under careful surveillance prior to his arraignment before the Court of Session.—*Bomb. II. C. Cir.*, 43; *Bombay Gazette*, 1879, pp. 471, 475.

470. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

This section corresponds with s. 429 of Act X of 1872, s. 124 of Act X of 1875, and s. 199 of Act IV of 1877. See 39 and 40 Geo. III, c. 94.

Section 84 of the Penal Code provides that nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. But the fact of unsoundness of mind is one which must be clearly and distinctly proved before the jury is justified in returning a verdict under s. 84 of the Indian Penal Code. Every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes until the contrary is proved.—*Reg. v. Nobin Chunder Banerjee*, 20 W. R., Cr., 70. See s. 105 of the Evidence Act.

In the case of *Reg. v. Sheikh Mustafa*, 1 W. R., Cr., 1, where it appeared at the trial that the prisoner was not of sound mind, the High Court directed that he should be placed under the care of a Surgeon who should be directed to carefully watch his state of mind and to report the result of his observations to the Sessions Judge not less than thirty days after he had taken charge of the prisoner. See *Reg. v. Parsoram Doss*, 7 W. R., Cr., 42.

In *Macnaghten's* case, 10 Cl. and Fin., 200, the following questions were propounded to the Judges by the House of Lords:—

1st.—What is the law respecting alleged crimes committed by persons afflicted with insane delusion, in respect of one or more particular subjects or person: as for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?

2nd.—What are the proper questions to be submitted to the jury, when a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder for example) and insanity is set up as a defence?

3rd.—In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when the act was committed?

4th.—If a person under an insane delusion as to existing facts commits an offence in consequence thereof, is he thereby excused?

5th.—Can a medical man conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole

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trial and the examination of all the witnesses, he asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious at the time of doing the act that he was acting contrary to law, or whether he was labouring under any and what delusion at the time?

To these questions the following answers were given by the Judges (with the exception of Mr. Justice MAULE, who delivered a separate judgment):

To the first question.—"Assuming that your Lordships' inquiries are confined to those persons who labour under such partial delusion only, and are not in other respects insane, we are of opinion that, notwithstanding the party accused did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law; by which expression we understand your Lordships to mean the law of the land.

To the second and third questions.—"As these two questions appear to us to be more conveniently answered together, we have to submit our opinion to be, that the jurors ought to be told in all cases that every man is to be presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused at the time of doing the act knew the difference between right and wrong: which mode, though rarely, if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put generally and in the abstract, as when put with reference to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction, whereas the law is administered upon the principle that everyone must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question to the jury whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong: and this course we think is correct, accompanied with such observation and explanations as the circumstances of each particular case may require.

To the fourth question.—"To this question the answer must, of course, depend on the nature of the delusion; but, making the same assumption as we did before, namely, that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he, supposes, in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune and he killed him in revenge for such supposed injury, he would be liable to punishment.

To the fifth question.—"In answer to this question we state to your Lordships, that we think the medical man, under the circumstances supposed, cannot, in strictness, be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide, and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But where the facts are admitted or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right."

The following rule is in force in Bengal:—

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s. 471

It is necessary that the finding under s. 429 (470) of the Criminal Procedure Code should state specifically whether the accused committed the act charged or not, if he be acquitted on the ground that at the time at which he is charged to have committed the offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law.* In some instances the Judges have found the prisoner *guilty* of the offence charged, and then acquitted him on the ground of insanity, thus including two opposite verdicts in one and the same finding, a contradiction arising from a want of attention to the words of the law.—*Calc. H. C. C. O. No. 22 of 10th Dec. 1864, Wilkins, p. 5.*

In Bengal the following form of acquittal on the ground of insanity is followed:—

The Court, concurring with the assessors, finds that () did kill () by striking him on the head with a club; but that, by reason of unsoundness of mind, he was incapable of knowing that he was doing an act which was wrong or contrary to law, and that he is therefore not guilty of the offence specified in the charge, *viz.*, and the Court directs that the said () be acquitted, and that, under the provisions of s. 430 (471), Criminal Procedure Code, the said () be kept in safe custody in the pending the orders of the Local Government.—*Letter No. 955 of 17th Aug. 1867, Wilkins, p. 5.*

In the case of *Gajee Peer*, 8 W. R., Cr. L., 19, the High Court pointed out that the finding in a case in which the accused was found to have committed the act charged while unsound in mind should have been in the following form:—

“The Court, therefore, concurring with the assessors, finds that Gajee Peer, did kill Baboo Mundul by striking him on the head with a club; but that, by reason of unsoundness of mind, he was incapable of knowing that he was doing an act which was wrong or contrary to law, and that he is not therefore guilty of the offence specified in the charge, *viz.*, that he has committed culpable homicide not amounting to murder by causing the death of Baboo Mundul, and has thereby committed an offence punishable under s. 304 of the Indian Penal Code, and the Court directs that the said Gajee Peer be acquitted, and that, under the provisions of s. 394 (471) of the Code of Criminal Procedure, the said Gajee Peer be kept in safe custody in the pending the orders of the Local Government.”

471. Whenever such judgment states that the accused person committed the act alleged, the

Person acquitted on such ground to be kept in safe custody.

Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the orders of the Local Government.

The Local Government may order such person to be confined in a lunatic asylum, jail or other suitable place of safe custody.

This section corresponds with s. 430 of Act X of 1872, s. 125 of Act X of 1875, and s. 202 of Act IV of 1877.

In the Punjab, reports to the Local Government should be addressed through Commissioners.—*Smyth, p. 134.* In Bengal, Magistrates and Sessions Judges must report direct to the Government of Bengal.—*Govt. Cir. No. 84, dated 18th Oct. 1870.*

* Magistrates and Sessions Judges should report such cases direct to the Government of Bengal.—*Government Circular, No. 84, dated 18th October 1870.*

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The power conferred on the Local Government has been extended to the Commissioner in Scind.—*Bombay Gazette*, 1874, p. 312.

Where a jury finds that a person was of unsound mind at the time of committing an offence, the High Court will not interfere with the verdict except upon the clearest proof that the jury was mistaken.—*Queen v. Doorjodhne Shamanto*, 19 W. R., Cr., 45.

472. When any person is confined under the provisions of section 466 or section 471, the Inspector-General of Prisons, if such person is confined in a jail, or the Visitors of the lunatic asylum, or any two of them, if he is confined in a lunatic asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector-General or by two of such Visitors as aforesaid; and such Inspector-General or Visitors shall make a special report to the Local Government as to the state of mind of such person.

Section 431 of Act X of 1872, s. 126 of Act X of 1875, and s. 202 of Act IV of 1877.

473. If such person is confined under the provisions of section 466, and such Inspector-General or Visitors shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector-General or Visitors as aforesaid shall be receivable as evidence.

Section 432 of Act X of 1872, s. 127 of Act X of 1875, and s. 201 of Act IV of 1877.

474. If such person is confined under the provisions of section 466 or section 471, and such Inspector-General or Visitors shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a commission consisting of a judicial and two medical officers.

Such commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his discharge or detention as it thinks fit. Ch. XXXIV
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475-475A

See s. 433 of Act X of 1872, s. 128 of Act X of 1875, and s. 203 of Act IV of 1877.

This section and the following sections extend the power given by ss. 433 and 434 of Act X of 1872 to discharge from custody or make over to his relatives a person acquitted on the ground of insanity, to the case of persons who being found to be insane at the time of trial are committed to custody.

In the Panjab, reports to the Local Government must be addressed through Commissioners.—*Smyth*, p. 134. In Bengal, such reports must be direct.—*Goot. Cir.*, dated 18th Oct. 1870.

The power conferred on the Local Government has been extended to the Commissioner in Scind.—*Bombay Gazette*, 1874, p. 312.

475. Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend.

Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs.

The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be receivable as evidence.

See s. 434 of Act X of 1872, s. 129 of Act X of 1875, and s. 204 of Act IV of 1877.

See note to preceding section.

“475A. The Governor-General in Council may direct that any person whom the Local Government has ordered under this chapter to be confined in a lunatic asylum, jail or other place of safe custody, shall be removed from the place where he is confined to any lunatic asylum, jail or other place of safe custody in British India. [Act X of 1886, s. 12.]

* Power of Governor-General in Council to order criminal lunatics confined by order of Local Government to be removed from one province to another

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Power of Local Government to relieve Inspector-General of certain functions.

"475B. The Local Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or section 471 to discharge all or any of the functions of the Inspector-General of Prisons under section 472, section 473 or section 474."
[Act X of 1886, s. 12.]

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

476. When any Civil, Criminal or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in section 195, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial to the nearest Magistrate of the first class, and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial.

Such Magistrate shall thereupon proceed according to law, and may, if he is authorized under section 192 to transfer cases, transfer the inquiry or trial to some other competent Magistrate.

Compare ss. 471 and 477 of Act X of 1872, s. 135 of Act X of 1875, and s. 44 (omitting last paragraph) of Act IV of 1877; compare also 14 and 15 Viet., c. 100, s. 9.

This chapter, it is to be observed, applies not only to Civil and Criminal, but also to Revenue Courts.

The power of the Court to commit the case itself given by s. 471 of Act X of 1872 is saved by the last paragraph of s. 487, *infra*.

This section empowers the Court to send the case to the nearest Magistrate of the first class, and not to "any Magistrate having power to try or commit," as under the former Code.

As to offences committed before Civil or Revenue Courts and triable exclusively by a High Court or Court of Session, see s. 478, *infra*.

Where an offence of the nature specified in s. 195 is committed before a Court, the Court must in every case hold an investigation to see if there is a *prima facie* case. It may, after this, send the case to a Magistrate for a regular 'preliminary inquiry.' But if it proceeds under s. 476 to commit direct to the Court of Session, where it has power to do so, it must itself hold a complete preliminary inquiry, framing charges and taking depositions. See *Reg. v. Radha Nauth Mozoomdar*, 5 Wym. Cr. Rul., 19.

No sanction should be granted without a preliminary inquiry where such inquiry is necessary under this section.—*Empress v. Nurotam Dass*, 1. L. R., 6 All., 98. As to when a preliminary inquiry is necessary, see *In re Gawri Sahai*, 1. L. R., 6 All., 114; *Empress v. Juala*, 1. L. R., 5 All., 62; *Reg. v. Chandramma*, 1. L. R., 7 Mad., 189, p. 190. In the case of *In re Parsotam Lal*,

I. L. R., 6 All., 101, where a Moonsiff gave sanction to prosecute for forgery, Ch. XXXV where the question whether a bond had been executed or not was, after suit s. 476 brought, by consent of the parties, referred to arbitration, and the arbitrator decided that the bond was a forgery, it was held by STRAIGHT, J., that the Moonsiff, not having determined the question of forgery himself, ought to have held a preliminary inquiry to satisfy himself that there were materials to justify a prosecution. It will be observed that in this case the document alleged to be forged was not actually given in evidence in the proceedings before the Court, though it was given in evidence in a proceeding before the arbitrator directed by the Court. The law requires only such preliminary inquiry as may be necessary. — *Empress v. Juala Prosad*, I. L. R., 5 All., 62.

The object of the preliminary inquiry is, that the Court may be satisfied that a specific charge coming under the sections mentioned in it ought to be preferred against the accused, and after being so satisfied, it must either commit the case (see s. 487, *infra*), or send it to the Magistrate for inquiry whether a commitment should be made or not. See *Kali Prosunno Bagchee, Petitioner*, 23 W. R., Cr., 39.

ss. 476, 439, 195. *Order directing prosecution—Revision.*] Under the general revisional powers conferred by s. 439 of the Code of Criminal Procedure, a High Court has power to consider the propriety of an order which purports to be passed under s. 476 of the Code. *Queen-Empress v. Rachappa* dissented from.

Where a defendant in a suit in the Court of a Munsif applied to the District Judge for sanction under s. 195 of the Code of Criminal Procedure to prosecute a witness who had given evidence in the Munsif's Court in support of a deed, produced as evidence before that Court, which had been found by the Munsif to be a forgery, and the District Judge refused the application, but, purporting to act under s. 476 of the Code, himself ordered the prosecution of such witness:—*Held* that the Judge's order was made without jurisdiction, the offence in respect of which the sanction was directed not having been committed before him, nor brought to his notice in the course of a judicial proceeding.

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nal Procedure Code of 1872 (476 of this Code) under which a preliminary inquiry was necessary. From the judgment it would appear, however, that the learned Judges treated the order as really made under the section of the Criminal Procedure Code. See *Umbica Sundari Chowdrani v. Ajitwollah Mondal*, 8 C. L. R., 148.

In the case of *Empress v. Kashmiri Lall*, I. L. R., 1 All., 625, it was held by a Full Bench of the Allahabad High Court (overruling the cases of *Queen v. Jagat Mal*, I. L. R., 1 All., 162, and *Queen v. Gur Bahsh*, I. L. R., 1 All., 193; see *Reg. v. Kultaram Singh*, *ib.*, 129), that an offence under s. 193 of the Penal Code could not be tried by the Magistrate before whom such offence was committed. See *Empress v. Baldeo*, I. L. R., 3 All., 322. This is now made clear by s. 487, *infra*.

Where the Magistrate to whom the case is sent by the Court for investigation, with the necessary sanction, himself investigates it, no complaint is necessary; nor is it necessary when the Court itself holds an investigation.—*Bom. H. C. Cir.*, 43.

The words in s. 195, *supra*, "except with the previous sanction or on the complaint of the public servant concerned," must be read in connection with s. 476, which was enacted with the object of avoiding the inconvenience which might be caused if a Moonsiff or a Subordinate Judge or a Judge was obliged to appear before a Magistrate and make a complaint on oath like an ordinary complainant in order to lay the foundation of a prosecution. The language of s. 476 indicates that where a Court is acting under s. 195, a complaint in the strictest sense of the Code is not required, and that the procedure therein laid down constitutes the "complaint" mentioned in s. 195.—*Ishri Prosad v. Sham Lall*, I. L. R., 7 All., 871 (F. B.), *per* PETHERAM, C. J., and STRAIGHT, J.

In transferring a case to a Criminal Court for investigation, the Civil Court is not bound to specify the particular officer by whom it is to be investigated,

Ch. XXIV and the deposition of the Civil Court officer setting forth the charge on which he transferred the case is a sufficient complaint.—*Queen v. Madhub Chunder Misser*, 13 W. R., Cr., 45.

If, in the course of a proceeding, either civil or criminal, a Judge or Magistrate finds clear grounds for believing that either the parties to the proceeding or their witnesses have committed perjury or any other offence against public justice, he is justified in directing criminal proceedings against such persons without any further inquiry than that which he has already held in his own Court.—*In re Mutty Lal Ghose*, I. L. R., 6 Calc., 308. See *Reg. v. Buz Joo Lall*, I. L. R., 1 Calc., 450.

The Magistrate to whom a case is sent for investigation may discharge the accused, if in his opinion the evidence against the accused is not sufficient to warrant their committal to the Court of Session.—*Reg. v. Pandurang Mayral*, 5 Bom. H. C. R., Cr. Cas., 41. The latter Court, however, can, under s. 436, *supra*, direct their committal.

A Magistrate to whom a case of giving false evidence has been sent by a Moonsiff is bound to complete the inquiry, and cannot return the case to the Civil Court.—*Reg. v. Jan Mahomed*, 3 B. L. R., Ap. Cr., 47; and see *Reg. v. Amruta Nuthu*, 7 Bom. H. C. R., Cr., 29.

477. Subject to the provisions of section 444, a Court of Session may charge a person for any offence referred to in section 195 and committed before it, or brought under its notice in the course of a judicial proceeding, and may commit or admit to bail and try such person upon its own charge.

Such Court may direct the Magistrate to cause the attendance of any witnesses for the purposes of the trial.

Compare s. 472, paras. 1 and 3, of Act X of 1872.

This section has been framed so as to allow a Court of Session to charge a person for giving false evidence before itself—a power of which such Courts were unintentionally deprived by s. 473 of Act X of 1872. See *Proceedings*, 24th March 1873, 7 Mad. H. C. R., Appx., xvii; *Queen v. Unnath Bundhoo Banerjee*, 21 W. R., Cr., 37; *In re Fata Iyah Khan*, 3 C. L. R., 599; (S. C.) I. L. R., 4 Calc., 570. See also the cases cited under s. 487, *infra*. See also *Mutirahal v. Reg.*, I. L. R., 3 Mad., 351.

A District Judge who had, on hearing a civil appeal, sanctioned the prosecution of a person for forgery, it was held, was not debarred from trying the offence in his capacity as Sessions Judge.—*Empress v. D'Silva*, I. L. R., 6 Bom., 479.

As to what is a judicial proceeding, see *Empress v. Chait Ram*, I. L. R., 6 All., 103.

With reference to the words 'brought under its notice in the course of a judicial proceeding,' see the case of *Queen v. Nomal*, 12 W. R., Cr., 69; (S. C.) 4 B. L. R., A. Cr., 9, where the expression 'under its own cognizance' which was to be found in s. 472 of the former Code was considered. That expression, it was said, was meant to provide for a case where it is brought under the notice of the Court of Session in the course of a judicial proceeding that the crime with which the party is to be charged has been committed by him. If, on a trial of a prisoner before a Court of Session, a witness gives evidence which contradicts that given by the same witness before the committing officer, and there is no evidence whatever to show which statement is true, it cannot be said to be within or under the cognizance of the Sessions Judge that the witness has given false evidence before the committing officer. What is brought under the cognizance of the Judge is, that the witness may have given false evidence before the committing officer. See *Sharma v. Empress*, Panjab Rec., 1884, p. 92.

478. When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of a judicial proceeding, and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

Power of Civil and Revenue Courts to complete investigation and commit to High Court or Court of Session.

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For the purposes of an inquiry under this section, the Civil or Revenue Court may, subject to the provisions of section 443, exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII, and shall be deemed to have been held by a Magistrate.

See s. 474, paras. 1 and 2, and as to the last para., see s. 476 of Act X. of 1872. Those sections, which were restricted to offences committed before the Civil Court and triable exclusively by a Court of Session, did not apply, as the present section does, to Revenue Courts.

It will be observed that this section applies not only to offences committed before a Civil or Revenue Court, but to offences brought under the notice of such Courts in the course of a judicial proceeding (see note to preceding section), and that the powers given by the section may be exercised also in cases which the Civil or Revenue Court thinks ought to be tried by the High Court or Court of Session, whether triable exclusively by such Courts or not.

The power of a Civil or Revenue Court to commit a case to the Court of Session after completing the preliminary inquiry is restricted to the cases provided in the section,—viz., where offences exclusively triable by a Court of Session are committed before the Civil or Revenue Court, or offences which such Courts think ought to be tried by a Sessions Court or High Court. Section 476 deals with a more extended class of cases,—viz., all those mentioned in s. 195 in which not merely a Civil Court, but any Court, Civil, Criminal, or Revenue, and whether possessing or not the power to commit to the Court of Session, is of opinion that there is sufficient ground for inquiry. Under that section one of two courses may be adopted by the Court,—that is to say, it may either commit the case to the Court of Session or High Court (see s. 487), if and when it has power to do so, or it may send the case to a Magistrate having power to try or commit the accused for trial. See *Empress v. Popat Nathu*, I. L. R., 4 Bom., 287.

If the Judge of the Civil Court intends to proceed under the provisions of this section, he must complete the investigation and commit or hold the accused persons to bail. See 1 W. R., Cr., 5.

479. When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate or other Magistrate

Procedure of Civil Court in such cases.

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authorized to commit for trial; and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

See s. 475 of Act X of 1872. Under that section the commitment was directed to be to "the Magistrate of the District or other Magistrate of the first class." Now it must be to the Presidency Magistrate, District Magistrate or other Magistrate authorized to commit for trial. The Magistrates empowered to commit for trial are, besides the Presidency Magistrate and District Magistrate, the Sub-divisional Magistrate, the Magistrates of the first class, or any Magistrate empowered in that behalf by the Local Government.—Section 206, *supra*.

Under s. 475 of Act X of 1872, the Court making the commitment was directed to frame and send a charge with the order of commitment. This section directs a charge to be sent.

480. When any such offence as is described in section 175, section 178, section 179, section 180, or section 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

Nothing in section 443 or section 444 shall be deemed to apply to proceedings under this section.

This section corresponds generally with s. 435, para. 1, of Act X of 1872. See also Act IV of 1877, s. 205. The last paragraph is new. See s. 487, *infra*.

Under the former Code, the imprisonment on default of payment was directed to be in a civil jail. This section is silent as to the jail in which the imprisonment shall be carried out.

Section 175 of the Penal Code relates to the omission to produce documents to a public servant by a person legally bound to produce them. Section 178 relates to the refusal to take an oath or affirmation when duly required by a public servant to do so. Section 179 relates to the refusal to answer questions put by a public servant authorized to put such questions. Section 180 relates to the refusal to sign a statement when required to do so by a public servant legally competent to require that the statement shall be signed. Section 228 relates to the intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.

Where a person is committed to jail for contempt, the Government is bound to supply him with rations in the same way in which they are supplied to other prisoners in the jail.—3 W. R., C. L., 21.

Prevarication while giving evidence does not constitute an offence punishable under this section, nor under s. 228 of the Penal Code (*Reg. v. Auda-bin Bhibrav*, 4 Bom. H. C. R., Cr., 6); nor does refusal or neglect to return direct answers to questions.—*Reg. v. Pondubin Vilhaji*, 4 Bom. H. C. R., Cr., 7. But see *Queen v. Chota Hurry Pramanich Tantee*, 15 W. R., Cr., 5, and s. 485, *post*.

A contempt of Court being a criminal offence, no person can be punished for such, unless the specific offence charged against him be distinctly stated and an opportunity given him of answering. Where a barrister, engaged in his professional duty before the Supreme Court at Hong-Kong, was, without notice

of the alleged contempt or rule to show cause, and without being heard in defence, by an order of that Court, fined and adjudged to have been guilty of several contempts of Court in disrespectfully addressing the Chief Justice while conducting a cause, such order, upon a reference by the Crown to the Judicial Committee, under the Statute 3 and 4 Will. IV, c. 41, s. 4, was set aside and the fine ordered to be remitted—*first*, on the ground that the order was bad, inasmuch as the offences charged were not of themselves such contempts of Court as legally constituted an offence; and *secondly*, that even if they had been so, no distinct charge of the several alleged offences was stated, and no opportunity given to the party accused of being heard before passing sentence.—*In re Pollard*, L. R., 2 P. C., 106.

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An officer before whom, while acting in a particular capacity, a contempt has been committed punishable under s. 228 of the Indian Penal Code, cannot in another capacity take up and try the offence.—*Reg. v. Chunder Seekur Roy*, 12 W. R., Cr., 18.

An appeal lies from an order under this section.—*Section 486, infra.*

No fee shall be chargeable for serving and executing any process, such as a notice, rule, summons or warrant of arrest, which may be issued by any Court of its own motion, solely for the purpose of taking cognizance of, and punishing any act done, or words spoken, in contempt of its authority.

Rule II, cl. 1, under s. 20 of Act VII of 1870—*Wilkins*, p. 87.

For warrant of commitment in cases of contempt when a fine is imposed, see Sched. V, No. 38.

481. In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

Record in such cases.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

This section corresponds with s. 435, paras. 2 and 3, of Act X. of 1872.

In the case of *Panchanda Tambiran*, 4 Mad., 229, where the Magistrate did not specifically record his reasons and the facts constituting the contempt with the statement of the offender, the High Court set aside the order inflicting a fine.

482. If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person under custody to such Magistrate.

Procedure where Court considers that cases should not be dealt with under section 480.

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The Magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

Compare s. 436, paras. 1 and 2, of Act X of 1872 and s. 206 of Act IV of 1877.

483. When the Local Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877, shall be deemed to be a Civil Court within the meaning of sections 480 and 482.

When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.

This section is new. It follows the ruling in the case of *In re Sardhari Lal*, 13 B. L. R., Apx., 40, where it was held, that a Sub-Registrar under s. 82 of the Registration Act, being a public officer and proceedings before him, therefore, judicial proceedings within s. 228 of the Penal Code, had jurisdiction under s. 435 and s. 436 of Act X of 1872 (ss. 481 and 482) to try an offence under s. 228 of the Penal Code.

484. When any Court has under section 480 adjudged an offender to punishment for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

Discharge of offender on submission or apology.

This section corresponds with s. 437 of Act X of 1872 and s. 207 of Act IV of 1877.

485. If any witness before a Criminal Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and, in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

Imprisonment or committal of person refusing to answer or produce document.

Compare ss. 356 and 364 of Act X of 1872, s. 89 of Act X of 1875, and s. 147 of Act IV of 1877.

The provision as to committing the offender to the custody of an officer of the Court is new. Ch. XXXV
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The last sentence is in accordance with s. 89 of Act X of 1875.

See ss. 121, 132, 146, 148, 149, 150, 151, 152 of the Evidence Act, I of 1872. As to effect of a witness refusing to answer, see *Reg. v. Gopul Dass*, I. L. R., 3 Mad. (F.B.), 271, and the cases there cited.

There is an appeal from a sentence under this section. See next section.

For form of Magistrate's or Judge's warrant of commitment under this section, see Sched. V, No. 39.

486. Any person sentenced by any Court under section

Appeals from con- 480 or section 485 may, notwithstanding
victions in contempt- anything hereinbefore contained, appeal to
cases. the Court to which decrees or orders made
in such Court are ordinarily appealable.

The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding or reduce or reverse the sentence appealed against.

An appeal from such conviction by a Court of Small Causes in a Presidency-town shall lie to the High Court, and an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the Sessions Division within which such Court is situate.

An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or, in the Presidency-towns, to the High Court.

See s. 268 of Act X of 1872. The last paragraph is new. See s. 483, *ante*, p. 352.

As to the period of limitation for an appeal under this section, see note to s. 404, *ante*.

487. Except as provided in sections 477, 480, and 485,

Certain Judges and no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, the Recorder of Rangoon, and the Presidency Magistrates, shall try any person
Magistrates not to try offences referred to in section 195 when committed before themselves. for any offence referred to in section 195.

when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

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Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court, or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for inquiry to another Magistrate.

Section 473, with which the first part of this section corresponds, provided simply that "No Court shall try any persons for an offence committed in contempt of its own authority," and much difficulty was experienced in determining what was an offence committed in contempt of its own authority.

It was held by a Full Bench at Allahabad, overruling *Queen v. Kullaram Singh*, 1862, that an offence against pub-

1 Bom., 311; *Reg. v. Parsapa Mahadevapu*, 1. L. R., 1 Bom., 1880. In the latter cases, the Court dissented from the two cases in the Allahabad Court, which were overruled by the Full Bench of that Court in *Empress v. Kashmiri Lall*, 1. L. R., 1 All. (F.B.), 625.

The rulings of the Madras High Court are in accordance with the later decisions of the Allahabad and Bombay High Courts. See *Mad. H. C. Pro.*, 24th March 1873; 7 Mad. H. C. R., Apx., xvii.

A District Judge who had, on hearing a civil appeal, sanctioned the prosecution of a person for forgery, was held under the Act of 1872 not to be debarred from trying the offence in his capacity of Sessions Judge.—*Empress v. D'Silva*, 1. L. R., 6 Bom., 479.

With reference to this point the following circular order was issued by the Chief Court of the Panjab:—In a criminal ruling in the case of *Crown v. Sain Das*, published as No. 25 in the Panjab Record of 1873, it was held by the Chief Court, that a Court before which the offence of giving false evidence has been committed is not precluded from trying the offence itself.

A similar view is embodied in Book Circular XXVII of 1865.

2. In a recent* unpublished judgment of the Chief Court, however, a contrary opinion has prevailed, and as the discrepancy between the two views is likely to mislead, and cases of the nature described are not infrequent, the Judges issue this circular in supersession of the instructions conveyed in Book Circular XXVII of 1865 above referred to.

3. The Judges, having fully considered the question, have unanimously adopted the view expressed in a ruling of the Bombay High Court, No. 53, dated 21st May 1873, in the case of *Reg. v. Navaranbeg Dulabeg*, which is to the effect that every attempt to pervert the proceedings of a Court to an improper end is a contempt of its authority within the meaning of s. 473, Criminal Procedure Code.

Accordingly, when any of the offences specified in s. 467, 468, or 469 (195) is committed before a Court, such Court is, in the opinion of the Chief Court, debarred by the terms of s. 473, Criminal Procedure Code, from trying the offence itself.—*Panjab Gazette*, 1874, Part III, p. 276, *Smyth*, p. 377.

The Calcutta High Court, on the other hand, consider that by the words "in contempt of its own authority" the Legislature seems to have intended, not any offence which may be construed into a contempt of the authority of the Court, but such offences as are ordinarily considered and are classed in the Indian Penal Code as offences against the authority of a Court,—that is to say, the offences mentioned in Chapter X of the Indian Penal Code, and probably also the offences mentioned in s. 228 of that Code.—*Sufutoollah, Petitioner*, 22 W. R., Cr., 49.

Under this section, however, which refers specifically to the particular offences mentioned in s. 195, when committed in contempt of the authority of the Court, it would seem that the difficulty which arose under s. 473 of Act X of 1872 would hardly arise.

* *Crown v. Raman*. Charge: s. 211, Indian Penal Code.

The Legislature, in substituting the descriptions of the presiding officers of the Courts referred to, for the word 'Court' used in s. 473 of Act X of 1872, appears to have adopted the decision of the Madras High Court that 'Court' was to be construed as referring to the office or to the person of the Magistrate or Judge before whom the offence was committed, and that the prohibition in the section was therefore a personal one.—*Proceedings, 2nd October 1877, 1, L. R., 1 Mad., 305.*

An Assistant Sessions Judge, it was held, is a different Court from the Sessions Judge.—*Reg. v. Gulabdas Kuberdas, 11 Bom. II. C. R., 98.*

As to the construction of the words 'brought under his notice,' see *Queen v. Nomal, 4 B. L. R., Cr., 11,* and the notes to s. 477, *supra*. In the case of *Empress v. Baldeo, 1, L. R., 3 All., 322,* B charged certain persons before a Police-officer with theft. The charge was brought by the police to the notice of the Magistrate having jurisdiction, and he directed the police to investigate into the truth of the charge. Having ascertained that the charge was false, the Magistrate took proceedings, under s. 211 of the Penal Code, against B on a charge of making a false charge and convicted him of that offence. It was held that, as the false charge was not preferred by B before the Magistrate, the offence of making it was not a contempt of his authority, and that the Magistrate was not precluded from trying B himself. There the original charge was not, it is to be observed, brought under the notice of the Magistrate in a judicial proceeding.

As to the second paragraph of this section, see s. 471 of Act X of 1872.

A Court of Sessions has no power to commit to itself a person charged under s. 193 of the Indian Penal Code with giving false evidence before it.—*In re Fataiyah Khan, 3 C. L. R., 599;* see the remarks of AINSLIE, J., in the case of *Bhokteram v. Heera Kolita, 1, L. R., 5 Cal., 187.* See also *Empress v. Sukhari, 1, L. R., 2 All., 405;* *Sundriah v. The Queen, 1, L. R., 3 Mad., 254.*

A Magistrate who issues an order under s. 145 has no jurisdiction under s. 188 of the Penal Code to punish a person for disobeying it.—*Reg. v. Ranchod Dayal, 10 Bom. II. C. R., 424.*

CHAPTER XXXVI.

OF THE MAINTENANCE OF WIVES AND CHILDREN.

488. If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presiding Magistrate, a Subdivisional Magistrate, or a Magistrate, as may, upon proof of such neglect or refusal, be empowered, may, upon proof of such neglect or refusal, cause the person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding twenty rupees in the whole, as such Magistrate thinks fit, and may direct the person to pay the same to such person as the Magistrate from time to time directs.

Such allowance shall be payable from the date of the order.

If any person so ordered wilfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person for the whole or any part of each month's allowance remaining due to him.

Ch. XXXVI unpaid after the execution of the warrant, to imprisonment
s. 488 for a term which may extend to one month :

Provided that, if such person offers to maintain his wife on condition of her living with him and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her ; and may make an order under this section notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

Proviso.

No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

All evidence under this chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases.

This section corresponds generally with s. 536 of Act X of 1872 and s. 234 of Act IV of 1877.

In the first paragraph, 'proof' is substituted for 'due proof by evidence.'

The power to cancel the order given by the penultimate clause of the section is new, as also the direction as to the manner in which evidence is to be recorded. The procedure in summons-cases is contained in Chap. XX.

An application for maintenance is not a complaint of an offence.—*Hildephonsus v. Malone*, Panjab Rec., 1885, p. 26 ; see s. 177, *supra*.

Imprisonment is now to be awarded only when the allowance remains unpaid after the execution of the warrant of distress. In making an order for maintenance, the Court has no power to pass an order for imprisonment in default of payment of the amount ordered.—5 Mad. H. C. R., Appx., xxxiv ; Proceedings, July 28th, 1870. Nor has the Court power, in making an order for maintenance, to take security for possible default.—*Karoo Soudagur v. Alubundee Bewa*, 24 W. R., Cr., 72.

As to the manner in which fines are to be levied, see ss. 386-7, *supra*.

For form of warrant of imprisonment on failure to pay maintenance, see Sched. V, No. 40, and for form of warrant to enforce the payment of maintenance by distress and sale, see Sched. V, No. 41.

A sentence of imprisonment awarded under this section for wilful neglect to comply with an order to pay maintenance is absolute, and the defaulter is not entitled to release upon payment of the arrears due.—*Biyacha v. Moidin Kutti*, I. L. R., 8 Mad., 70.

An order for maintenance made by a Magistrate not empowered to make such order is void.—Section 530 (r), *infra*.

As to Magistrates empowered to act under this section, see *In re Shaik Fakrudin*, I. L. R., 9 Bom., 40.

A Magistrate of the first class has, as such, power to pass an order under this section, although he may not be empowered to take cognizance of offences without complaint.—*In re Todd*, 5 All., 237.

CRIMINAL PROCEDURE CODE (ACT X OF 1882), SEC. 488 - *Maintenance—Illegitimate children—Right of a married woman to claim maintenance for her illegitimate children—Evidence of wife to prove non-access—Evidence—Presumption of legitimacy—Evidence Act (I of 1872), Sec. 112.*] A married woman is entitled under section 488 of the Code of Criminal Procedure (Act X of 1883) to claim maintenance for her illegitimate children from the putative father.

A wife can be examined as to non-access of her husband during her married life, without independent evidence being first offered to prove the illegitimacy of her children.

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Further, an order made by the Magistrate under this section must be founded upon legal proof in the same proceedings and not upon knowledge acquired by the Magistrate in some other case.—*Lopatee Domnee v. Tikha Moodai*, 8 W. R., Cr., 67; (S. C.) 4 Wym. Cr. Rul., 25. See *Gonda v. Pyari Doss Gossain*, 13 W. R., Cr., 19.

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The last paragraph of the section provides that all evidence under this chapter shall be taken in the presence of the husband or father. Great hardship, it is conceived, may result from this provision, where a person against whom an order for maintenance has been passed leaves the district, and an application is made to enforce the order against him. But under the old Code, which contained no such provision, the Magistrate who had made an order for maintenance, it was held, might have issued a warrant for collection of arrears of maintenance when the husband was out of his jurisdiction.—*Queen v. Karri Papayamma*, 1 L. R., 4 Mad., 230. Apparently a warrant might still issue under s. 490, but there may be a question whether the order could be enforced by imprisonment, if the evidence were not taken in the presence of the person against whom the order was made.

In determining questions under this chapter as to the maintenance of wives and families, a Magistrate has no power to enter into any question as to the lawful guardianship of a child (*Lal Das v. Nekunjo Bhaishiani*, 1 L. R., 4 Cal., 374; *Mehtab Bibi v. Alla Bakhsh*, Punjab Rec., 1885, p. 38): nor is he warranted in ordering a mother to surrender her illegitimate child to its father, although the child be of the age of maturity, and her refusal to do so is no ground for stopping an allowance previously directed to be paid to her.—*Ibid*.

Where it appeared that the husband had not been called upon to maintain his wife who had up to that time lived with her father, and that the father had refused to let the wife live with her husband without the payment of a sum of money, the High Court set aside an order directing the husband to pay his wife a monthly sum for maintenance.—*Mussamut Somree v. Jitun Sonar*, 22 W. R., Cr., 30.

An offer by a Hindu having two wives, to maintain the first wife by allowing her to live in his house and by supplying her with grain to be cooked and eaten separately, coupled with a refusal to live with her as husband and wife, is not a sufficient offer of maintenance.—*Marakkhal v. Gaudappa Goundan*, 1 L. R., 6 Mad., 371. Nor is the fact that the husband, a Hindu, had married a second wife, a sufficient reason to justify an order for separate maintenance.—*Arumugan v. Tulukunam*, 1 L. R., 7 Mad., 187.

The mere fact that husband and wife cannot agree to live together is no ground for decreeing separate maintenance to the wife.—*Mussamut Jesmut v. Shoojaut Ali*, 6 W. R., 59.

An order for maintenance of a child should fix such a sum as, with reference to all the circumstances and to the means of the person who neglects or refuses to maintain the child, may seem reasonable, but the amount should be definitely fixed. There is no provision authorizing a prospective enhancement of the amount, as on the child attaining a particular age.—*Mussamut Munglo v. Junna Dass*, 2 All., 454.

An order cannot be made for the maintenance of an unborn child.—*Mussamut Larlee v. Bunse Ditchit*, 3 All., 70.

If the form of marriage that has been gone through is sufficient to enable the offspring of the union to inherit, the wife will be entitled to maintenance.—*Queen v. Bahadur Singh*, 4 All., 128. See *Queen v. Judoo Mussulmanee*, 6 W. R., Cr., 60.

An order for maintenance under this section, it was held in Allahabad, does not after divorce become inoperative before the expiration of the divorced wife's *iddat* or period of probation.—*In re Din Muhammad*, 1 L. R., 5 All., 226. So in Madras it was held, that a divorced Mahomedan wife is entitled to maintenance during the *iddat*, but an order for maintenance for a period subsequent to the expiration of the *iddat* is illegal. If she be pregnant, she would be entitled to maintenance during gestation.—*Mad. H. C. Pro., 2nd December 1879, Weir*, p. 22. See *Nepoor Aurut v. Jurai*, 19 W. R., Cr., 73; *In re Luddun Sahiba*, 1 L. R., 8 Cal., 736; (S. C.) 11 C. L. R., 237. Moreover, although a *moota* wife under the law of the Shia sect of Mahomedans is not entitled to maintenance, yet such a wife is entitled to claim maintenance under this section.—*In re Luddun Sahiba*, 1 L. R., 8 Cal., 736; (S. C.) 11 C. L. R., 237. The husband does not, by giving up the unexpired portion of the term fixed by a *moota* marriage, terminate the relationship of husband and wife.—*Ib*.

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Although no specific power to cancel an order for maintenance was given by the former Codes, a Presidency Magistrate, it was held, under s. 234 of Act IV of 1877, was competent to stay an order for maintenance, and to refuse to issue his warrant under the 3rd clause of that section, and to try all questions raised before him which affected the right of a woman to receive maintenance. There can, it was held, be no distinction raised between a dissolution of marriage obtained under the Indian Divorce Act and a dissolution obtained under the Mahomedan law. It is only on proof of the existence of the relationship of husband and wife that a Magistrate can make an order granting maintenance to a wife; but where proof has been given that such relationship has ceased to exist, he may stay an order already made under that section.—*Abdur Rohoman v. Sakhina*, 1. L. R., 5 Calc., 558; (S. C.) 5 C. L. R., 21; *In re Abdul Ali Ismailji*, 1. L. R., 7 Bom., 180. See *In re Kasam Pirbhai*, 8 Bom. H. C. R., 95; *Nepoor Aurul v. Jurai*, 19 W. R., Cr., 73.

The allowance being payable from the date of the order, an order directing the payment of maintenance in arrears from a certain date is illegal.—*Mud. H. C. Pro.*, 30th July 1875, *Weir*, p. 22. But there is nothing in this section to render the levy of accumulated arrears of maintenance by a single warrant illegal.—*Mud. H. C. Pro.*, 11th Nov 1874; 7 Mad. H. C. R., Appx., xxxvii.

The grounds upon which an order awarding maintenance is based should be stated in the order.—*Mud. H. C. Pro.*, 28th November 1876, *Weir*, p. 22.

When a duly empowered Magistrate had decided a matter under this section by dismissing the application after hearing the evidence offered, the District Magistrate, it was held under Act X of 1872, was not competent to entertain the complaint *de novo*.—*Mussanul Jamoti v. Gatalo Kamur*, 1 C. L. R., 89. But the fact that an application for maintenance has been made in one district and rejected on the ground of jurisdiction, is not a bar to another application of a similar character before a Magistrate who has jurisdiction.—*In re Todd*, 5 All., 237. See *Shaik Fakuridin*, 1. L. R., 9 Bom., 40.

An order under this section does not bar a civil suit by a wife against her husband for maintenance (*Lallah Gopee Nauth v. Musst. Jeetun Kover*, 6 W. R., Civ., 57): nor is a decision of a Civil Court refusing to enforce a contract for the maintenance of a woman on the ground of limitation a bar to an application under this section.—*Meiselhach, Petitioner*, 17 W. R., Cr., 49.

An agreement by a husband to maintain his wife by giving her a house and jewels, and by delivering to her annually a certain quantity of grain and money, cannot be enforced under this section.—*Viramma v. Narayya*, 1. L. R., 6 Mad., 283.

A Magistrate has no power under this section to make an order for maintenance at a progressively increasing rate. He may, however, under the next section, from time to time, alter the rate of the monthly allowance granted as maintenance.—*Upendra Nath Dhal v. Soudamini Dasi*, 1. L. R., 12 Calc., 535.

An agreement by the mother with the father of an illegitimate child to accept a particular sum for maintenance of the child is not binding on the guardian of the child after the death of the mother.—*Hildephousus v. Malone*, Punjab Rec., 1885, p. 26.

An order made by a Magistrate directing a Mahomedan husband to pay a sum monthly for the maintenance of his wife does not deprive such husband of his inherent right to divorce his wife, and after such divorce the Magistrate's order can no longer be enforced.—*In re Kasam Pirbhai*, 8 Bom. H. C. R., Cr. Cas., 95; *Abdur Rohaman v. Sakhina*, 1. L. R., 5 Calc., 558; (S. C.) 5 C. L. R., 21; *In re Abdul Ali Ismailji*, 1. L. R., 7 Bom., 180—except for period of *iddat*.

It is open to a husband, upon whom an order to make an allowance for the maintenance of his wife has been made, to prove afterwards that his wife is living in adultery, and upon such proof, a Magistrate is justified in cancelling the order.—*In re Chaku*, 8 Bom. H. C. R., Cr. Cas., 124. Where, on an application by a husband for the cancellation of an order for maintenance on the ground of the wife's adultery, the Magistrate rejected the application on the ground that the wife's adultery was not established, the Allahabad High Court held that another Magistrate was not competent, upon a subsequent application, to reopen the matters which had already been adjudicated upon, and therefore could not legally make an order for discontinuance of maintenance upon proof of adultery by the wife prior to the former application.—*Laruith v. Ram Dial*, 1. L. R., 5 All., 224.

An order for the payment of a monthly allowance to an illegitimate child is not a conviction for an offence, and consequently is not appealable.—*Reg. v. Golam Hossein Chowdhry*, 7 W. R., Cr., 10; (S. C.) 3 Wym Cr. Rul., 7. Such an order is, however, a judicial proceeding (*Reg. v. Thaku bin Ira*, 5 Bom. H. C. R., Cr., 81), and as such subject to the revisional jurisdiction of the High Court. See ss. 435—439. Ch. XXXVI
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An insolvent who has obtained a protection order is not liable to arrest or imprisonment in respect of arrears of maintenance due under an order made by the Magistrate included in the schedule filed by him.—*Tohee Bebee v. Abdool Khan*, I. L. R., 5 Calc., 536; (S. C.) 5 C. L. R., 458. WILSON, J., in that case, doubted whether the protection order would protect the insolvent from proceedings in respect of maintenance accruing subsequently to the filing of the schedule.

Imprisonment cannot be awarded in anticipation of default to an order for a monthly maintenance.—*Mad. H. C. Pro.*, 7th December 1866 and 24th April 1873, *Weir*, p. 16.

A warrant may be issued for the recovery of arrears of maintenance. Though a warrant is permissible on every breach of the order to pay maintenance, the result of issuing it for an aggregate of payments is, that one month's imprisonment would alone be awardable for the amount unpaid after the execution of the warrant. See *Mad. H. C. Pro.*, 19th April 1871.

A Magistrate may both levy the amount of the fine and order the defaulter to be imprisoned for a term not exceeding one month for each allowance remaining unpaid (*Mad. H. C. Pro.*, 11th November 1874, *Weir*, p. 46), that is, after the execution of the warrant.

The proviso to this section does not authorize a Magistrate to entertain applications for separate maintenance, on the ground of ill-treatment from wives whose husbands have not neglected or refused to maintain them, but who have of their own accord left their husbands' house and protection, and to order allowances to be paid to such wives on evidence of ill-treatment.—*In re Thompson*, 6 All., 205.

The High Court alone can interfere by way of revision with an order under this section.—*Subad Domni v. Kaliram Dome*, 20 W. R., Cr., 58. In that case the High Court declined to interfere with an order of a Magistrate declaring a person to be the father of an illegitimate child when it appeared that the Magistrate acted upon the sworn testimony of the mother, and that he called before him the person complained of as being the reputed father.

489. On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit, provided the monthly rate of fifty rupees be not exceeded.

This section corresponds generally with s. 537 of Act X of 1872 and s. 235 of Act IV of 1877.

Under the rules framed by the Calcutta High Court in accordance with cl. ii, s. 20 of the Court-Fees Act, 1870, a fee of one rupee is chargeable for serving and executing a warrant of levy or fine or of maintenance to wife, children, &c., and a percentage on the amount of fine or maintenance levied, viz., 2 per cent. on sums not exceeding Rs. 100. Where the sum exceeds Rs. 100, the 2 per cent. on Rs. 100 and 1 per cent. on the amount of excess.—*Calcutta Gazette*, 1874, p. 478.

A person aggrieved by an order directing him to pay a certain sum for maintenance should apply to the Magistrate under this section.—*Goyamoney Surinee v. Mohesh Chunder Shaha*, 9 W. R., Cr., 1; see *Mehlab Bibi v. Alla Bakhsh*, Panjab Rec., 1885, p. 38.

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secs.
490-491

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order shall be enforceable by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

This section corresponds with s. 236 of Act IV of 1877. In s. 538 of Act X of 1872, the provision as to copies of orders being given without payment was omitted, but such copies were exempted from payment of court-fees.—*Notification of Govt. of India, No. 996, 6th June 1873, Gazette of India, 1873, p. 520, Wilkins, p. 107. See Queen v. Karri Pappayamma, I. L. R., 4 Mad, 230, cited in note to s. 488.*

CHAPTER XXXVII.

DIRECTIONS OF THE NATURE OF A HABEAS CORPUS.

Power to issue directions of the nature of a *habeas corpus*.

491. Any of the High Courts of Judicature at Fort William, Madras, and Bombay may, whenever it thinks fit, direct—

(a) that a person within the limits of its ordinary original civil jurisdiction be brought up before the Court to be dealt with according to law;

(b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any Commission from the Governor-General in Council for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively;

(e) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and

(f) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

Each of the said High Courts may, from time to time, frame rules to regulate the procedure in cases under this section.

Nothing in this section applies to persons detained under Bengal Regulation III of 1818, Madras Regulation II of 1819 or Bombay Regulation XXV of 1827, or the Acts of the Governor-General in Council, No. XXXIV of 1850 or No. III of 1858.

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s. 492

Compare s. 82 of Act X of 1872 and s. 148 of Act X of 1875.

Clause (a) in s. 148 of the latter Act has been omitted, as also the clause directing that neither a High Court nor any Judge thereof shall, after the passing of that Act, issue a writ of *habeas corpus* for any of the purposes of the section.

The Regulations and Acts referred to in the proviso relate to the custody and confinement of State prisoners.

PART IX.

SUPPLEMENTARY PROVISIONS.

CHAPTER XXXVIII.

OF THE PUBLIC PROSECUTOR.

492. The Governor-General in Council or the Local Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

In any case committed for trial to the Court of Session, the District Magistrate, or, subject to the control of the District Magistrate, the Subdivisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below the rank of Assistant District Superintendent, to be Public Prosecutor for the purpose of such case.

The first part of this section embodies the provisions of ss. 57 and 58 of Act X of 1872. As to the second paragraph, see s. 202, para. 2, of Act X of 1872. The discretion of the District Magistrate has been curtailed. Now he cannot appoint as Public Prosecutor any officer of police below the rank of Assistant District Superintendent. The provision giving the Subdivisional Magistrate power, subject to the control of the District Magistrate, to make an appointment under this section, is new.

For definition of 'Public Prosecutor,' see s. 4 (m), *ante*.

It has been held by a Full Bench of the High Court at Allahabad that a person appointed under this section by the Magistrate of the District to be a Public Prosecutor for the purpose of a particular case tried in the Court of Sessions, has not the power of a Public Prosecutor with regard to withdrawal, under s. 494, from prosecutions.—*Emp. v. Madho*, I. L. R., 7 All., 291.

A Public Prosecutor should be without interest in the case which he conducts. His duty is to assist the Court in the furtherance of justice, and not to act as counsel for any particular person or party. "He should not by statement aggravate the case against the prisoners: nor keep back a witness, because his evidence may weaken a case for the prosecution. His only object should be to aid the Court in

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discovering truth. A Public Prosecutor should avoid any public proceeding likely to intimidate or unduly influence witnesses on either side. There should be on his part no unseemly eagerness for, or grasping at, convictions."—*Reg. v. Kashinath Dinkar*, 8 Bom. H. C. R., Cr., 126, 153, *per* WESTROP, C.J.

It is the duty of the Public Prosecutor at a trial before the Sessions Court to call and examine all material witnesses sent up to the Court on behalf of the prosecution, and the Judge is bound to hear all the evidence upon the charge. But he is not bound to call any witnesses who will not, in his opinion, speak the truth, or support the points he desires to establish by their evidence; but in such circumstances he should explain to the Court that this is his reason for not calling these witnesses, and he should offer to put them in the box for cross-examination by the accused at his discretion.—*Empress v. Tulla*, 1. L. R., 7 All., 904. In the absence of any such explanation or other reasonable grounds apparent on the face of the proceedings, inferences unfavourable to the prosecution must be drawn from the non-production of its witnesses.—*Ibid.*

So in the case of *In re Dhanu Kazi*, 1. L. R., 8 Cal., 121, it was said that it is *prima facie* the duty of the prosecution to call all the witnesses who from their connection with the transactions connected with the prosecution, must be able to give important information. If such witnesses are not called without sufficient reason being shewn, the Court may properly draw an inference adverse to the prosecution. The only thing that can relieve the prosecution from calling such witnesses is the reasonable belief that, if called, they would not speak the truth. No such corresponding inference can be drawn about the accused.—*Ibid.* See *Ram Sahai Lall*, 1. L. R., 10 Cal., 1070.

For rules as to the employment of the Government Advocate in connection with criminal prosecutions in the province of British Burma, see *Burma Gazette*, Part II, p. 25.

For rules regarding Public Prosecutors in Bombay, see Bombay Circulars, pp. 56–58.

All Sessions Judges and Judicial Commissioners are to allow the Government Pleaders in their several districts to have access to their decisions in all criminal cases in which medical evidence is taken.—*Calc. H. C. C. O. No. 10 of 22nd September 1869, Wilkins*, p. 147.

Sessions Judges in the Lower Provinces should give every facility to Magistrates and District Superintendents of Police for inspecting the records of cases in their Courts, and for the preparation of copies by clerks sent by the District Magistrate, care being taken that the records are not removed from the Judge's office.—*Calc. H. C. C. O. No. 5 of 21st September 1880, Wilkins*, p. 147.

493. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal; and, if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

Public Prosecutor may plead in all Courts in cases under his charge.

Pleaders, privately instructed, to be under his direction.

This section corresponds with s. 60 of Act X of 1872.

No party has any right to be heard, either personally or by pleader, before any Court when exercising its powers of revision; provided that the Court may, if it thinks fit when exercising such powers, hear any party either personally or by pleader (s. 440). But under ss. 436, 439, para. 2, *ante*, which also deal with powers of revision, an accused has a right to appear before any order to his pre-judice can be passed against him under that section.

494. Any Public Prosecutor appointed by the Governor-General in Council or the Local Government may, with the consent of the Court in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person; and, upon such withdrawal,

(a) if it is made before a charge has been framed, the accused shall be discharged;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted

Compare s. 61 of Act X of 1872, by which it was provided that upon withdrawal of *any charge* whilst the case was under inquiry, the accused person should be discharged; but that if on such withdrawal the accused was under trial, he should be acquitted.

This section, it is to be observed, provides for the withdrawal from the *prosecution*, and directs that the accused on such withdrawal shall, if no charge has been framed, be discharged, or shall, if the withdrawal is after a charge has been framed, or when no charge is required, be acquitted.

It has been held by a Full Bench of the High Court at Allahabad that a person appointed by the Magistrate of the District under s. 492, *supra*, to be a Public Prosecutor for the purpose of a particular case tried by the Court of Session, has not the power of a Public Prosecutor with regard to withdrawal from the prosecution under this section.—*Emp. v. Madho*, I. L. R., 7 All., 291.

Compare s. 240, *ante*.

495. “Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below a rank to be prescribed by the Local Government in this behalf with the previous sanction of the Governor-General in Council” [Act X of 1886, s. 13]; but no person other than the Advocate-General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Local Government in this behalf, shall be entitled to do so without such permission.

Any person conducting the prosecution may do so personally or by a pleader.

“An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.” [Act X of 1886, s. 13.]

Compare s. 59 of Act X of 1872 as amended by Act XI of 1874, s. 8, and s. 129 of Act IV of 1877. Under these sections permission might be given to any person to conduct a prosecution. Act IV of 1877, however, excepted the persons who are excepted by this section. In the case of *Queen v. Ramchunder Sircar*, 13 W. R., Cr., 18, KEMP and JACKSON, JJ., expressed an opinion that it was highly objectionable for prosecutions in Sessions Courts to be conducted by officers of the police.

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s. 496

Under s. 129 of Act IV of 1877 it was held, that, with the exception of the Advocate-General, Standing Counsel, Government Solicitor, or other officer generally or specially empowered by the Local Government in that behalf, no person, whether counsel or attorney, could claim the right to conduct the prosecution of any criminal case without the permission of the Presidency Magistrate.—*Empress v. Butokristo Dass*, 1. L. R., 6 Cal., 59.

By s. 270, *ante*, it is provided that in every trial before a Court of Session the prosecution shall be conducted by a Public Prosecutor. See notes to that section and to s. 4 (*m*), *ante*.

Any person, whether a private complainant or not, when permitted to conduct a case as prosecutor, may instruct counsel to appear.—*In re Narayan M. Pendshe*, 11 Bom. H. C. R., 102.

In the case of *Empress v. Honkerapa*, 1. L. R., 8 Bom., 534, it was held, that this section had not superseded the provisions of s. 23 of the Bombay Police Act, VII (Bom.) of 1867. That section provides: "It shall be lawful for any Police-officer to lay any information before a Magistrate, and to apply for a summons, warrant, search-warrant or such other legal process as may by law issue against any person committing an offence, and to prosecute such person up to final judgment."

CHAPTER XXXIX.

OF BAIL.

469. When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a Police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any state of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

See s. 128 (para. 2), s. 194 (para. 2), s. 204 (para. 1), and ss. 388 and 393 of Act X of 1872, and ss. 70 and 74 of Act IV of 1877.

No Police-officer other than an officer in charge of a Police-station has power to admit an accused person to bail. See s. 170, *supra*.

No person who has been arrested by a Police-officer shall be discharged except on his own bond or bail, or under the special order of a Magistrate.—S. 63, *ante*.

Section 513, *infra*, permits a deposit of a sum of money or Government promissory notes to be given, except in the case of a bond for good behaviour, in lieu of executing a bond.

Where the personal attendance of an accused person is dispensed with, a recognizance-bond, if deemed necessary, should be taken from him and not from his agent.—*Reg. v. Lallabhai Jassubhai*, 5 Bom. H. C. R., Cr., 64. So, where it becomes necessary to adjourn the hearing of a summons-case, the attendance of the accused person may be secured at the adjourned hearing by taking a recognizance from him.—*Queen v. Chocha Rai*, 6 N. W. P. Rep., p. 366.

The proceeding in which it has to be determined whether an accused person should be admitted to bail by a Magistrate is a judicial proceeding.—*Manikam v. Queen*, 1. L. R., 6 Mad., 63.

For form of bond and bail-bond on a preliminary inquiry before a Magistrate, see Sched. V, No. 42.

Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise, are exempted from court-fees.—*Act VII of 1870*, s. 19, *cl. xv*.

497. When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a Police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

See s. 128 (para. 1), s. 194 (para. 2), and s. 389 of Act X of 1872 and s. 71 of Act IV of 1877.

Bail ought not to be demanded where the accused has been discharged. It can be demanded only in cases where further inquiry is pending, and the accused has not been discharged.—*Ram Lall Tewaree v. Soopha Ram*, 10 W. R., Cr., 34; (S. C.) 1 B. L. R., S. N., xxvii.

A Magistrate ought not to remand an accused where there is no evidence, in the expectation of evidence turning up.—*In re Mohesh Chunder Banerjee*, 4 B. L. R., App., 1.

The proceeding in which it has to be determined whether an accused should be admitted to bail by a Magistrate is a judicial proceeding.—*Manikam Mudali v. Queen*, 1 L. R., 6 Mad., 63.

If, upon an investigation under Chap. XIV, it appears to the officer in charge of the Police-station that there is sufficient evidence or reasonable ground, such officer must forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial; or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed, and for his attendance from day to day before such Magistrate until otherwise directed. When the officer in charge of a Police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under s. 170, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant, if any, and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate and prosecute or give evidence (as the case may be) in the matter of the charge against the accused (s. 170, *supra*). See also the provisions of s. 171, *supra*.

Officers in charge of Police-stations must report to the District Magistrate, or, if he so directs, to the Subdivisional Magistrate, the cases of all persons arrested without warrant within the limits of their respective stations, whether such persons have been admitted to bail or otherwise (s. 62, *supra*), and no person who has been arrested by a Police-officer shall be discharged except on his own bond or on bail, or under the special order of a Magistrate.—S. 63, *supra*.

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498. The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a Police-officer or Magistrate be reduced.

See ss. 129, 390, and 508 of Act X of 1872 and s. 136 of Act X of 1875. The previous section of the present Code provided that a person accused of a non-bailable offence should not be released on bail if there appeared reasonable grounds for believing that he had been guilty of the offence charged. This section empowers the High Court or Court of Session to direct that any person without restriction be admitted to bail. A Sessions Court, in referring a case under s. 438, might direct that a person already convicted should be admitted to bail. Section 390 of Act X of 1872 empowered the Court to direct that any *accused* person should be admitted to bail, and it was held by a Full Bench under that section, that a Court of Session had no power to admit a convicted person to bail, a *convicted person* not being an *accused person* within the meaning of the section.—*Reg. v. Thakur Parshad*, I. L. R., 1 All. F. B., 151. It had already been so held in *Reg. v. Ram Rutton Mookerjee*, 24 W. R., Cr., 8, and in *Reg. v. Kanhai Shahu*, 23 W. R., Cr., 40. See also *Aradham Mundul v. Myan Khan Tukadger*, 24 W. R., 74; *Reg. v. Mahendra Narayan Bangabhusan*, 1 B. L. R., Cr., 7, under Act XXV of 1861. In the present section the word 'accused' has been omitted. Accordingly, there is now, it would seem, nothing to prevent the High Court or Court of Session from admitting a convicted person to bail.

The following rule has been published for guidance in the N.-W. Provinces: It must be understood that for every bailable offence, bail is a right, not a favour: detention in the lock-up is the alternative, not the original order. The bail demanded should never be excessive with reference to the social status of the party. The amount of bail and the offence charged, with the section under which it is punishable, should always be stated on the face of the order directing the accused to be detained in the lock-up. He should be informed also that the friends of the accused may ascertain what is required. Bail may be tendered and must be accepted at any time before conviction. Under s. 399 (513) deposit of cash or Government promissory notes may be made in lieu of bail, except in cases coming under Chap. VIII (of security for good behaviour).—*Smyth*, p. 129.

499. Before any person is released on bail or released on his own bond, a bond for such sum of money as the Police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the Police-officer or Court, as the case may be.

If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

See s. 391 of Act X of 1872 and s. 72 of Act IV of 1877.
The last clause is new.

The power in terms given to a Police-officer to determine the amount for which a bond may be required is new. See ss. 170 and 171. The Police-officer mentioned in this section would appear to be a Police-officer in charge of a Police-station.—S. 496, *supra*.

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500-502

For form of bond and bail-bond on a preliminary inquiry before a Magistrate, see Sched. V, No. 42.

The following rule obtains in the N.-W. Provinces: A considerable diversity of practice exists in carrying out the provisions of the law in regard to taking of recognizances from accused persons and their sureties, and the result of the diversity and irregularity is not only to cause Police-officers to be employed in needless inquiries, but also to keep the accused person in custody pending the result of inquiry into the sufficiency or otherwise of the bail offered. The attention of the criminal authorities is therefore directed to s. 391 (499 of this Act) of the Code of Criminal Procedure, which simply requires the Magistrate to take recognizance in such a sum of money as he may think sufficient from the accused and one or more sureties, and to ss. 396 and 397 (388 and 389), which lay down the proceedings to be adopted to compel payment of the penalty mentioned in the recognizance from the person executing the personal recognizance and from his sureties. At the same time, however, it is the duty of the Magistrates to satisfy themselves that the sureties are in point of substance persons of whom it may be reasonably presumed that they can, if necessary, satisfy the terms of the bail-bond.—*Smyth*, p. 130.

500. As soon as the bond has been executed, the person

Discharge from custody.

for whose appearance it has been executed shall be released; and when he is in jail, the Court admitting him to bail shall issue

an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him.

Nothing in this section, section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

The first part of this section corresponds with s. 394 of Act X of 1872 and s. 73 of Act IV of 1877.

The last paragraph is new.

For form of warrant to discharge a person imprisoned on failure to give security, see Sched. V, No. 43.

501. If, through mistake, fraud or otherwise, insuffi-

Power to order sufficient bail when that first taken is insufficient.

cient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest, directing that the person released on bail be brought

before it, and may order him to find sufficient sureties, and on his failing so to do may commit him to jail.

* This section corresponds with s. 392 of Act X of 1872 and s. 75 of Act IV of 1877.

The words 'or otherwise' are new. See the last paragraph of s. 497, *supra*.

502. All or any sureties for the attendance and appearance

Discharge of sureties.

of a person released on bail may at any time apply to a Magistrate to discharge the bond

either wholly or so far as relates to the applicants.

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s. 503

On such application being made, the Magistrate shall issue his warrant of arrest, directing that the person so released be brought before him.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody.

This section corresponds with s. 395 of Act X of 1872 and s. 76 of Act IV of 1877.

CHAPTER XL.

OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

503. Whenever, in the course of an inquiry, a trial or any other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session or the High Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limit of whose jurisdiction such witness resides, to take the evidence of such witness.

When the witness resides in the dominions of any Prince or State in alliance with Her Majesty in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is, or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

This section consolidates the provisions of s. 330, paras. 1 and 2; of Act X of 1872, s. 76, para. 1; of Act X of 1875, and of ss. 157 and 158 of Act IV of 1877. It must appear that the examination of the witnesses is 'necessary for the ends of justice.'

The power given to a District Magistrate under this section to issue commissions is new. Ch. XL
s. 503

Other Magistrates desiring to issue a commission must, under s. 506, apply to the District Magistrate.

The taking of evidence on commission in criminal cases is unknown to English practice, and ought in this country to be most sparingly resorted to—only in extreme cases of delay, expense, or inconvenience. See remarks of STRAIGHT, J., in *In re Farid-un-nissa*, I. L. R., 5 All., 92.

In the case of *Hurro Soondery Chowdhrahi*, I. L. R., 4 Calc., 20 ; (S. C.) 3 C. L. R., 93, AINSLIE and BROUGHTON, JJ., allowed a *pardanashin* woman summoned as a witness in a criminal case to be exempted from personal attendance in Court, and to be examined on commission ; but the question as to whether *pardanashin* women had a right to such exemption was not apparently considered. In the case of *Farid-un-nissa*, I. L. R., 5 All., 92, STRAIGHT, J., referring to that case, said that while he was not prepared to hold that *pardanashin* women were of right exempted from personal attendance at Court, he would be loath to hold that the word inconvenience in s. 330 of the old Code of Criminal Procedure did not empower the Courts to allow examination by commission in criminal cases, where a witness, according to the customs and manners of the country, ought not to be compelled to appear in public. The case there was a prosecution for defamation, and STRAIGHT, J., was of opinion that the fact of her being a person who had set the criminal law in action materially altered her position in considering whether a commission should issue, and directed the Magistrate that if the complainant whom it was sought to examine on commission was found to be a *pardanashin* lady, and if she elected to attend and support her charge, to allow her to be brought into his room in the courthouse in her palki, or to make such other arrangements as might enable her to remain in it, and strictly preserve her privacy, and to subject her to the least inconvenience or annoyance for the purpose of recording her evidence according to law in the presence of the accused after identification by some approved witness.

In the case of *Empress v. Counsell*, I. L. R., 8 Calc., 896, WILSON, J., refused to issue a commission in a criminal case before the High Court Criminal Sessions, on the ground that in criminal cases the issue of a commission is a most unsatisfactory course of proceeding and one dangerous to the interests of the prisoner.

In the case of *Empress v. Bal Gungadhar Tilah*, I. L. R., 6 Bom., 285, where a Government servant had executed his recognizance to appear and give evidence for the prosecution at a criminal trial to take place at the High Court of Bombay, and was subsequently ordered to a distant station in public service, and could not, with due regard to public interests, return to Bombay before the time, SARGENT, J., allowed him to be examined on commission before his departure from Bombay. The ground, apparently, on which he did so was that there was nothing special in the case to make it necessary that the witness should be personally present at the trial, and his evidence both on examination and cross-examination would be just as effective if taken on commission, as it would if he were to appear in Court.

In the case of *Empress v. Burhe*, I. L. R., 6 All., 224, where the accused was charged with dishonestly receiving stolen property, knowing it to have been stolen, at the trial the Sessions Judge, under s. 33 of the Evidence Act, admitted the evidence of the owner of the property in respect of which the accused was charged, and of his wife taken by commission during the inquiry before the Magistrate, and the evidence of the servant of these persons taken at the inquiry, and also the evidence of the owner of the property taken during the trial under a commission issued under this section. The grounds upon which the Sessions Judge admitted the evidence taken during the inquiry were that the attendance of the witnesses could not be procured without an expense of Rs. 500, an amount which he considered unreasonable, and that the witnesses would be inconvenienced, and their evidence had reference merely to the identification of the property, the subject of the charge. It was held that the evidence had been improperly admitted. OLDFIELD, J., remarking that inconvenience to witnesses was no ground allowed under s. 33 of the Evidence Act, and that the question of identification was a most material one in the case, the whole case resting on it. The Court also held on similar grounds that the case was not one in which the Sessions Judge was justified in issuing a commission.

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In the case of *Ralli v. Gankim Swee*, I. L. R., 9 Calc., 939, it was held that if, when evidence is taken before commissioners, a document is tendered and objected to on any ground, the opposite party is not precluded from objecting to the document at the trial on any other ground—it not being necessary to state all the objections to the admissibility of a document when it is first tendered. The party objecting is at liberty to take any fresh objection whenever the party producing the document tenders it in evidence at the trial. In the same case it was held that where a commission to take evidence is issued to any place beyond the jurisdiction of the Court issuing the commission, it is not necessary, in order to admit secondary evidence of the contents of a document, that the party tendering it should have given notice to produce the original, nor is it necessary for him to prove a refusal to produce the original.

Under Act X of 1875, s. 76, it was held, that the evidence of a witness taken upon commission was not admissible in a criminal trial held before the High Court, unless it could be shown that such evidence was so taken upon an order made by that Court under s. 76 of that Act, or unless it was admissible under s. 33 of the Evidence Act.—*Empress v. Dabee Pershad*, I. L. R., 6 Calc., 532.

Section 33 of the Evidence Act is as follows:—

Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case the Court considers unreasonable.

Provided—

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

It would appear that the Courts have no power to issue a commission out of the jurisdiction except in cases provided for by this section itself. See *Empress v. Moorga Chetty*, I. L. R., 5 Bom. (F. B.), 338. See also ss. 188 and 189, *supra*.

504. If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same to the said Presidency Magistrate, who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the thirty-ninth and fortieth of Victoria, chapter 46, section 3.

Compare s. 330 of Act X of 1872 as amended by s. 35, para. 1, of Act XI of 1874, and Act X of 1875, s. 76, para. 4.

The last paragraph is new.

505. The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in

Parties may examine witness.

writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed shall examine the witness upon such interrogatories.

Any such party may appear before such Magistrate or officer by pleader, or, if not in custody, in person, and may examine, cross-examine, and re-examine (as the case may be) the said witness.

Compare s. 330, para. 4, of Act X of 1872, as amended by s. 35, para. 2, of Act XI of 1874; and Act X of 1875, s. 76, para. 5.

The interrogatories must now be such as the Magistrate or Court issuing the commission thinks relevant.

506. Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided, or reject the application.

Power of Provincial Subordinate Magistrate to apply for issue of commission.

See Act X of 1872, s. 330, para. 5. Under that section, a Magistrate to whom it appeared necessary that a commission should issue was obliged to apply to the Court of Session to which he was subordinate. Now he must apply to the District Magistrate, who, under s. 503, is empowered to issue a commission.

507. After any commission issued under section 503 or section 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto, and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

Return of commission.

Compare Act X of 1872, s. 330, last para., as amended by s. 35, para. 3, of Act XI of 1874, and Act X of 1875, s. 76, para. 6.

508. In every case in which a commission is issued under section 503 or section 506, the inquiry or trial.

Adjournment of inquiry or trial.

inquiry, trial or other proceeding may be

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adjourned for a specified time reasonably sufficient for the execution and return of the commission.

This section is new. See the New York Criminal Procedure Code, s. 708. As to adjournments generally, see s. 344, *supra*, and the explanation to that section.

CHAPTER XLI.

SPECIAL RULES OF EVIDENCE.

509. The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

See Act X of 1872, s. 323; Act X of 1875, s. 71; Act IV of 1877, s. 152. The deposition must be taken and attested by a Magistrate in the presence of the accused. See *In re Jhubboo Mahton*, I. L. R., 8 Calc., 739.

The report of a medical officer not given on oath is not evidence and cannot be used under this section.—*In re Chulomonee Nye*, 11 W. R., Cr., 2; *In re Samiruddin*, 10 C. L. R., 11; *Quecu v. Kamnee Dassee*, 12 W. R., Cr., 25. A medical officer, in giving evidence, may refresh his memory by referring to a report which he has made of his *post-mortem* examination, but the report cannot be treated as evidence.—*Raghoni Singh v. Empress*, I. L. R., 9 Calc., 455; (S. C.) 11 C. L. R., 569.

The evidence of a medical man who has seen and has made a *post-mortem* examination of the corpse of the person touching whose death the inquiry is made, is admissible, firstly, to prove the nature of the injuries which he observed; and secondly, as evidence of the opinion of an expert, as to the manner in which those injuries were inflicted, and as to the cause of death. A medical man who has not seen the corpse is only in a position to give evidence of his opinion as an expert. The proper mode of eliciting such evidence is to put to the witness hypothetically the facts which the evidence of the other witnesses attempts to prove, and to ask the witness his opinion on these facts—see *per FIELD, J.*, *Raghoni Singh v. Empress*, I. L. R., 9 Calc., 455; (S. C.) 11 C. L. R., 569.

In the case of *In re Jhubboo Mahton*, I. L. R., 8 Calc., 739; (S. C.) 12 C. L. R., 233, the medical officer was called in the Sessions Court, and it was contended that as he was called, his deposition taken by the Magistrate was inadmissible; but the High Court held that it was not so, but that, on the deposition being put in, the medical officer might be further interrogated upon any points upon which there had not been sufficient examination by the Magistrate.

The attention of Magistrates is called to s. 323 (509) of the Code of Criminal Procedure, and they are informed that a committing Magistrate should not, except for some special reason, bind over a medical witness, whose evidence he has taken, to appear in the Sessions Court. It is very undesirable that medical men in the districts should be taken away from their dispensaries more frequently, or for a longer period, than is absolutely necessary.—*Bombay Gazette*, 7th May 1881.

The deposition of a medical witness, which may be given in evidence under this section, should be put in and read as part of the case for the prosecution before the accused person is called upon to enter on his defence.—*Calc. H. C. C. O. No. 11*, 2nd September 1867, *Wilkins*, p. 114.

The attendance of the Civil Surgeon at the Criminal Courts of the station for the purpose of giving evidence is one of his ordinary official duties, and he is not entitled to claim, nor are the Courts authorized to grant, a fee for this duty. When a Civil Surgeon is required to proceed more than five miles beyond the limits of his station, he is entitled to travelling allowance under Resolution of Government of India, dated 26th April 1872, published in the *Punjab Gazette of the 27th April 1872*, at page 1388.

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When a medical officer, other than the Civil Surgeon or officer in medical charge of the civil station, is summoned to give professional evidence in a Criminal Court touching the result of a *post-mortem* examination conducted by him in cases not falling within the ordinary discharge of the duties, a fee of Rs. 16 shall be allowed him in addition to the usual expenses payable to witnesses in criminal trials.—*Smyth*, p. 125.

510. Any document purporting to be a report under the hand of *any* [Act X of 1886, s. 14] Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code. •

Compare Act X of 1872, s. 325, para. 1; Act X of 1875, s. 72; Act IV of 1877, s. 153.

The words 'any proceeding under this Code' have been substituted for 'any trial or in any preliminary inquiry relating thereto.' The report under the former Code might only be used as evidence in any criminal trial. Under this section, it may be used as evidence 'in any inquiry, trial or other proceeding.'

The original report of the Chemical Examiner bearing the signature, and not a copy of the report, should be put in evidence.—*Reg. v. Bishumbhur Doss*, 15 W. R., Cr., 49; (S. C.) 6 B. L. R., Apx., 122. Reports of the Additional Chemical Examiner, it has been held by the High Court at Calcutta, could not be used in evidence under this section.—*Empress v. Autal Muchi*, 1. L. R., 10 Cal., 1026. Now the amendment made by Act X of 1886, s. 14, has got rid of the difficulty.

511. In any inquiry, trial or other proceeding under this Code a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force—

(a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or

(b) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment, under which the punishment was suffered;

together with, in each of such cases, evidence as to the

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Compare Act X of 1872, ss. 326 and 515, last clause.

Clause (a) of this section corresponds with s. 119 of Act X of 1875; cl. (b) with s. 154 (b) of Act IV of 1877—see also s. 230 of the same Act. The last clause is new.

Under s. 403, a person once convicted and acquitted cannot again be tried for the same offence.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date, and place of the previous conviction shall be stated in the charge (s. 221, *supra*). See s. 75 of the Indian Penal Code as to increased punishment in case of previous conviction.

The procedure in case of trial before a jury, or with aid of assessors in case of previous convictions, is laid down by s. 310, *supra*. See s. 348.

Where any European British subject has, upon the summary inquiry mentioned in s. 5 of the European Vagrancy Act, XXI of 1869, been determined to be a vagrant, an office copy of the declaration recorded under that section shall be *prima facie* evidence that the European British subject named therein has been, upon such inquiry, determined to be a vagrant.—S. 30.

512. If it be proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their deposition. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into or trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence in his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

Compare Act X of 1872, s. 327; Act X of 1875, s. 74; Act IV of 1877, s. 155.

See ss. 32 and 33 of the Evidence Act, I of 1872.

Where an accused person has absconded and it is intended to record evidence against him in his absence, it is requisite under this section that the fact of the absconding should be alleged and established before the deposition is recorded.—*Ghurbin Hind v. Empress*, I. L. R., 10 Calc., 1098; *Wahid v. Empress*, Panjab Record, 1883, p. 47. See s. 33 of the Evidence Act.

The witnesses for the prosecution should be examined in the presence of the accused when practicable, notwithstanding that their statements have been previously recorded in his absence.—*Reg. v. Bochu Chowheedar*, 22 W. R., Cr., 33. See *Empress v. Sugambar*, 12 C. L. R., 120.

Before examinations are received as evidence under any of these three sections, care must be taken to see that they are in proper form and duly attested, or otherwise strictly proved. And under s. 33 of the Evidence Act, I of 1872, examinations cannot be given as evidence, unless it is proved that the witness, whose examination it is proposed to put in, is dead, or the Court is satisfied that for sufficient cause his attendance cannot be procured. See *Empress v. Burke*, I. L. R., 6 All., 224.

Such examinations when so received are to be detached from the proceedings in the preliminary inquiry and annexed to the record of the trial.—*Calc. H. C. C. O. No. 11 of 2nd September 1867, Wilkins, p. 114.*

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It should be shown that when the former deposition was taken, the accused had absconded, and after due pursuit could not be arrested.—*Reg. v. Etwaree Dharee, 21 W. R., Cr., 12.*

Whenever a charge of crime is brought against any person who has absconded and cannot be arrested, the nature and circumstances of its commission, as far as can be ascertained from the statements of persons acquainted with the facts, should be faithfully and minutely recorded, with all its bearings against other parties, as well as the parties suspected. In cases where the crime has terminated fatally, the evidence of the medical officer as to the cause of death should invariably be recorded, as it is of the first importance to find out how the party came by his death.—*Smyth, p. 121.*

CHAPTER XLII.

PROVISIONS AS TO BONDS.

513. When any person is required by any Court or officer to execute a bond, with or without recognizance. sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

Act X of 1872, s. 399; Act X of 1875, s. 139; Act IV of 1877, s. 80.

514. Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class, or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person.

• Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the distress and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate [Act X of 1886, s. 4], within the local limits of whose jurisdiction such property is found.

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If such penalty be not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

The Court may at its discretion remit any portion of the penalty mentioned and enforce payment in part only.

This section makes the procedure applicable to the recovery of a penalty from the principal in the case of security to keep the peace, provided by s. 502 of Act X of 1872, applicable in the case of all bonds under this Code. Act X of 1872 contained various provisions for realizing penalties under bonds which had become forfeited. See ss. 396, 397, 398 (paras. 1 and 2), and ss. 503 and 514. See also Act XI of 1874, ss. 37, 44; Act X of 1875, ss. 137, 138; Act IV of 1877, ss. 77, 78, 79, 228, and 229.

For form of warrant of attachment to enforce a bond, see Sched. V, No. 44; for form of notice to surety on breach of a bond, *ib.*, No. 45; for form of notice to surety of forfeiture of bond for good behaviour, *ib.*, No. 46; for form of warrant of attachment against a surety, *ib.*, No. 47; for form of warrant of commitment of the surety of an accused person admitted to bail, *ib.*, No. 48; for form of notice of forfeiture of a bond to keep the peace to the principal, *ib.*, No. 49; for form of warrant to attach the property of the principal on breach of a bond to keep the peace, *ib.*, No. 50; for form of warrant of imprisonment on breach of a bond to keep the peace, *ib.*, No. 51; for form of warrant of attachment and sale on forfeiture of a bond for good behaviour, *ib.*, No. 52; for form of warrant of imprisonment on forfeiture of a bond for good behaviour, *ib.*, No. 53.

The High Court as a Court of Revision has no power to reduce the amount of a recognizance that may have been forfeited (*In re Noor-ool-Huk*, 2 C. L. R., 408; (S. C.) 1 L. R., 3 Calc., 757; *In re Nilmadhub Ghosal*, 19 W. R., Cr., 1); nor has the Magistrate.—*In re Nahi Hazi*, 8 C. L. R., 72; *Empress v. Umra*, Panjab Record, 1883, p. 2. In such a case the Magistrate of the District should refer the matter to Government if he thinks the amount of the recognizance was excessive.

Before a warrant can issue attaching the property of a surety, he must be called on to show cause why he should not pay the penalty mentioned in his bond, and it must appear clearly on the face of the record that he had such notice given him. *Khooda Koiburtuee v. Doorgadass Bhattacharjee*, 15 W. R., Cr., 82. A Magistrate ought not to forfeit a recognizance to keep the peace under this section, unless the person charged with the breach has had an opportunity of cross-examining the witnesses upon whose evidence the rule to show cause has been issued.—*Empress v. Nobin Chunder Dutt*, 4 C. L. R. (F. B.), 243; 1 L. R., 4 Calc. (F. B.), 865.

There is no provision in this Code authorizing a Police-officer to take a surety-bond for the production of any person before the police. Such a bond is *ab initio* void, and a Magistrate has no power to alter it or impose fresh obligations thereunder.—*In re Chandra Sekhar Rai*, 1 L. R., 11 Calc., 77. A Magistrate acting under this section must proceed on legal evidence, and the penalty can only be enforced on proof that the bond was duly executed and forfeited.—*ib.*, p. 78.

An order escheating a recognizance or a bail-bond must be made upon evidence duly recorded in the case, and not upon evidence taken in other cases. The terms of this section must be strictly followed. It is not competent to direct that in default of payment the person whose recognizance is forfeited should be imprisoned without first issuing a warrant for the attachment and sale of his moveable property.—*In re Mohesh Chunder Roy*, 10 C. L. R., 571.

There is nothing in this section to prevent an accused person who has forfeited his bail-bond from being proceeded against under s. 174 of the Indian Penal Code, notwithstanding that his surety has already been made to pay the penalty

mentioned in the recognizances.—*In re Tajpomuddy Lahoree*, 10 W. R., Cr., 4. But when a forfeiture of a recognizance-bond has been proved before a Magistrate, he ought to consider what punishment is suitable for the offence entailing the forfeiture in addition to the penalty due under the bond. He ought not to punish for the offence and then at some other time take steps to recover the penalty:—*In re Parbatti Churn Bose*, 3 C. L. R., 406. Ch. XLII
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If a person has really forfeited his recognizances to keep the peace, the Magistrate must record evidence in the presence of the accused, proving that he was about to do something which would cause a breach of the peace.—*In the matter of Kalikant Roy Chowdhry*, 3 B. L. R., Apx., 155.

A Magistrate has no jurisdiction to call on a person who has entered into a recognizance-bond under s. 493 (Act X of 1872) to pay the penalty or show cause why he should not pay it, without previous *prima facie* proof on oath or affirmation (s. 502) that it has been forfeited.—*In re Huriram Birbham*, 11 Bom. H. C. R., 170.

A recognizance, entered into in one district, to keep the peace towards another, is forfeited if the person making it should be convicted in another district of having assaulted that other person.—*Reg. v. Sham Sundar Chowdhry*, 2 B. L. R., Ap. Cr., 11.

Where a defendant who merely bound himself to appear on a particular day has fulfilled that condition, the forfeiture of his recognizance, because he did not also appear on the following day, is illegal.—*Mad. H. C. Pro.*, 1868, 9th April 1869, and 4th December 1878, *Weir*, p. 30.

When a Magistrate has before him the fact that a person convicted by him of an offence attended with violence was under recognizance to keep the peace, and does not, nevertheless, forfeit such recognizance, it must be held that he thought it unnecessary to do so. Subsequent proceedings taken after the lapse of a considerable period are bad and contrary to the intention of the law.—*In re Ram Chunder Lalla*, 1 C. L. R., 134.

515. All orders passed under section 514 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or if not so appealed, may be revised by him.

Appeals from, and revision of, orders under section 514.

See Act X of 1872, s. 398, penultimate paragraph. If any Magistrate, not being empowered in that behalf, revises under this section an order passed under the previous section, his proceedings are void.—*S. 530 (i), infra*.

In the case of *Anantha Charri v. Anantha Charri*, I. L. R., 2 Mad., 169, where a first class Deputy Magistrate in the Madras Presidency decided that a bond for keeping the peace had been forfeited and thereupon levied the penalty, it was held there was no appeal from his order. Under this section, however, all orders respecting bonds, of whatever description they may be, passed under s. 514, are appealable to the District Magistrate.

As to whether the High Court has power to reduce the amount of a recognizance which has been forfeited, see notes to the previous section.

516. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

Power to direct levy of amount due on certain recognizances.

Act X of 1872, s. 398, last paragraph; Act X of 1875, s. 138, last paragraph.

CHAPTER XLIII.

OF THE DISPOSAL OF PROPERTY.

517. When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any document or other property produced before it regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

Order for disposal of property regarding which offence committed.

When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

When an order is made under this section in a case in which an appeal lies, such order shall not (except when the property is livestock or is subject to speedy and natural decay) be carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of.

EXPLANATION. — In this section the term ‘property’ includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

The first clause of this section corresponds with the first paragraph of s. 418 of Act X of 1872, as amended by Act XI of 1874, s. 38; see s. 115 of Act X of 1875 and ss. 243 and 244 of Act IV of 1877. The second paragraph embodies a rule issued by the High Court of Bombay, dated the 13th of September 1877 (*Bombay Gazette*, 1879, p. 828), which, however, applied only to Sessions Courts, and directed that the order should be carried out by the committing Magistrate. Now the order of both Sessions Courts and the High Court may be directed to be carried out by the District Magistrate.

The third paragraph appears to be new.

The explanation corresponds with the explanation added to s. 418 of Act X of 1872 by s. 38 of Act XI of 1877.

Upon general principles, where there has been an inquiry or trial and the accused is discharged or acquitted by any Criminal Court, that Court is bound to restore the property into the possession of the person from whom it was taken, unless, as provided by this section, such Court is of opinion that ‘any offence appears to have been committed’ regarding it, or that it has been used for the commission of an offence. Then such order as appears right for the disposal of the property may be made. See *In re Annapurnabai*, 1. L. R., 1 Bom., 630; *In re Anant Ramchander Lothkar*, 10 Bom., 197. In the former case, A was charged before the police with the theft of certain property. The police considered that no theft had been committed, and reported the matter to a second class Magistrate, who, agreeing with the police, ordered the property to be restored to A. On application by the

complainant, the District Magistrate found that A had removed, though not dishonestly, the property from B, a deceased person, and ordered the property to be given by the police to B's heirs, and it was so given. It was held, that the provisions of Act X of 1872 did not apply. It was further held, that the High Court had no power to direct the restoration of the property already delivered by the police under an illegal order of the District Magistrate. See *Mad. H. C. Pro.*, 13th Feby. 1874, 30th June 1874, 9th March 1877, *Weir*, p. 24.

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An order, after trial, made by a Criminal Court for the restoration of property under this section is conclusive as to the immediate right to possession. Where, however, an order has to be made under s. 523, *post*, the Magistrate may in the inquiry proceed on such evidence as is available and make an order for handing the property to the person he thinks entitled, but this order does not conclude the right of any person, and the real owner may proceed against the holder of the property.—*Empress v. Tribhovan Manchchand*, I. L. R., 9 Bom., 131.

Where, on acquittal, a Criminal Court passes an order for restoration of property, the proper course for the District Magistrate, if he thinks the order improper, is to direct it to be stayed under s. 520, but not to treat the property as subject to an order under s. 523 and set it aside.—*Empress v. Abhram Umar*, I. L. R., 8 Bom., 575; see *In re Annapurnabai*, I. L. R., 1 Bom., 630.

Under the next section the Court may, instead of passing an order under this section, direct the property to be delivered over to the District Magistrate or Subdivisional Magistrate to be dealt with by him under s. 523.

No order can be passed with reference to the disposal of any property in a Criminal Court unless that property is produced before the Court. Such order must be made at the time of passing judgment.—*Rash Mohun Goshamy v. Kali Nath Raha*, 19 W. R., Cr., 3.

This section does not place the property at the disposal of the Magistrate in the sense of enabling him to bestow it in charity. The Magistrate should make such legal disposition thereof as seems right,—that is, direct it to be given to some one to whom it seems to belong, or permit it to continue in the possession in which it is found or otherwise.—*Mad. H. C. Pro.*, 20th July 1875, *Weir*, p. 24.

Where a person was accused of dishonestly receiving stolen property knowing it to be stolen, and was discharged by the Magistrate, on the ground that there was no evidence that the property was stolen,—it was held, that the Magistrate was competent, believing that the property was stolen, to make an order under the corresponding section (418) of Act X of 1872.—*Empress v. Nilambar Babu*, I. L. R., 2 All., 276.

Where a stolen currency note had been delivered to a *bonâ fide* holder for value, the High Court refused, on conviction of the thief, to restore the note to the person from whom it was stolen.—*In re Mitchell*, 1 C. L. R., 339; (S. C.) I. L. R., 3 Cal., 379. A currency note was there held not to be included in the term 'goods' within the meaning of the Contract Act. The rule of law that possession by the taker in good faith is no defence against the owner of a chattel whose possession was lost through theft has no application to a currency note, which, like money, does not stand on the same footing as other chattels. The property in money passes by mere delivery, and nothing short of fraud will graft an exception upon that rule.—*Mad. H. C. Pro.*, 6th Feby. 1877; 7 *Mad. H. C. R.*, 233, *Weir*, p. 23.

The words 'any property' which occur in the former Codes, and for which the words 'any document or other property' have now been substituted, were held to include as well property voluntarily produced before the Magistrate by a witness in the case, as property seized by the police or found on the person of the accused.—*Reg. v. Ramdas Samaldas*, 12 Bom. H. C. R., 217.

It has been held that the corresponding section of Act X of 1872 does not authorize the Court to order destruction of obscene books surrendered by the accused.—*Empress v. Indurman*, I. L. R., 3 All., 837, but now see the provisions of s. 521.

518. In lieu of itself passing an order under section 517, the Court may direct the property to be delivered to the District Magistrate or to a Subdivisional Magistrate, who shall in such cases deal with it as if it had been

Order may take form
of reference to District
or Subdivisional Ma-
gistrate.

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5008.
 519-521 in the manner hereinafter mentioned.

This section corresponds with s. 420 of Act X of 1872. See s. 523, *post* and the note thereto.

519. When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing, or having reason to believe, that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

This section is new. It has been taken from the English Statute 30 and 31 Vict., c. 35, s. 10.

520. Any Court of appeal, confirmation, reference or revision, may direct any order under section 517, section 518 or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court ; and may modify, alter or annul such order.

This section corresponds with s. 419 of Act X of 1872, but further includes a Court of confirmation.

The words 'Court of Appeal' were considered in the case of *In re Michell*, 1 G. L. R. 339 ; (S. C.) 1 L. R., 3 Calc., 379. There a Government promissory note was stolen from A and cashed by B for C. On the conviction of C for theft, the Magistrate ordered the note to be given to B. A appealed to the Sessions Judge, who was of opinion that he was not competent to interfere as a Court of Appeal, but submitted the case for the orders of the High Court. It was held, that the case might have been disposed of by the Sessions Judge under s. 419 of Act IX of 1872, and that the words 'Court of Appeal' in the section were not necessarily limited to a Court before which an appeal was pending.

In the absence of an order under s. 517, the revising authority can pass no order under this section. See *Mad. H. C. Pro.*, 30th April 1870, *Weir*, p. 36.

521. On a conviction under the Indian Penal Code, section 292, section 293, section 501 or section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

The Court may in like manner, on a conviction under the Indian Penal Code, section 272, section 273, section 274

or section 275, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

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This section is new.

Sections 292 and 293 of the Indian Penal Code relate to the sale, &c., and possession of obscene books, pamphlets, drawings, &c. Sections 501 and 502 of the same Code relate to the printing and engraving and sale of substances containing defamatory matter.

522. Whenever a person is convicted of an offence attended by criminal force, and it appears

Power to restore possession of immovable property. to the Court that, by such force, any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same.

No such order shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.

This section corresponds with s. 534 of Act X of 1872, s. 142 of Act X of 1875, and s. 233 of Act IV of 1877.

The foundation of an order under this section should be the finding of the Court to the effect that the person in whose favour the order is made has been dispossessed of specific immovable property by the use of criminal force, which force formed a material ingredient in the matter of a criminal conviction, and when such a finding has been arrived at, the order should be in terms to restore the person, who has been so dispossessed, to the property from which he had been dispossessed.—*Mohunt Luchmi Dass v. Pallat Lall*, 23 W. R., Cr., 54.

See s. 145.

523. The seizure by any Police-officer of property taken under section 51, or alleged or suspected

Procedure by police upon seizure of property taken under section 51 or stolen. to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it, and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation.

Procedure where owner of property seized unknown. on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it, and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation.

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The first paragraph of this section corresponds with s. 415, para. 1, of Act X of 1872, inserting the words 'respecting the delivery of such property to the person entitled to the possession thereof.' See s. 387 of Act X of 1872 and s. 244 of Act IV of 1877.

The first part of the second paragraph is new. The remainder corresponds with s. 416 of Act X of 1872.

Sections 415, 416, and 417 of Act X of 1872, it was held, contemplated proceedings preliminary to, and independent of, inquiry.—*In re Annapurnabai*, 1 L. R., 1 Bom., 630.

The provisions of this section are wider than those of ss. 415 and 416 of Act X of 1872, upon which the decision in case of *In re Annapurnabai*, 1 L. R., 1 Bom., 630, was based, and they enable the Magistrate to inquire into the ownership of property seized by the police and deliver it to the person entitled to it instead of to the person from whom it is taken.—*Empress v. Joti Rajnah*, 1 L. R., 8 Bom., 338.

As to the manner in which a proclamation may be issued, see s. 87, *supra*, and see *Empress v. Nillamber Babu*, 1 L. R., 2 All., 276. The Magistrate is bound to summon the witnesses named by any claimant and to take due steps for securing their attendance.—*Sookhan Sahoo v. The Government of Bengal*, 18 W. R., Cr., 5.

Under this section, a confession as to the ownership of property which might be inadmissible to be used to establish an offence would apparently be admissible as an admission under s. 18 of the Evidence Act against the person who made it in his character of one setting up an interest in property the object of litigation or judicial inquiry and disposal. See *Empress v. Tribhovan Munekchand*, 1 L. R., 9 Bom., 131—see p. 134, *per* West, J.: "Where there has been a trial and an order by the trying Court under s. 517 of the Criminal Procedure Code that concludes the immediate right to possession. Where, as in this case, an order has to be made under s. 523, the Magistrate may in the inquiry proceed on such evidence as is available, and make an order for handing property to the person he thinks entitled. This does not conclude the right of any person. The real owner may proceed against the holder of the articles or for damages as for conversion."—*Ib.* See *Bullock v. Dunlop*, L. R., 2 Ex. Div., 43; *Dover v. Chill*, L. R., 1 Ex. Div., 172.

Property seized by the police as stolen property and ordered by the Magistrate to be forwarded to head-quarters is to remain in the custody of the police until the Magistrate makes an order for the issue of a proclamation under s. 416 (corresponding with this section), when it should be transferred to the Nazir. If it is of great value, and consists of bullion, coin or jewels, it should be made over to the treasurer.—*Smyth*, p. 88.

524. If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate or Subdivisional Magistrate, or of a Magistrate of the first class empowered by the Local Government in this behalf.

In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

This section corresponds with s. 417 of Act X of 1872, save as to the disposal of the proceeds where the property has been sold, which is dealt with by the next section. See s. 244 of Act IV of 1877.

The procedure prescribed by this and the preceding sections must be followed before an order confiscating property can be made. See *Behary Shaha v. Nubby Khan*, 9 W. R., Cr., 13. Ch. XLIV
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In the Panjab, all senior officers at head-quarter stations under the Magistrate of the District, who are Magistrates of the first class, were, under s. 417 of Act X of 1872, invested with power to sell suspicious or stolen property.—*Panjab Gazette*, 1873, p. 75. And again, Magistrates of the first class were empowered, subject to the general control of the Magistrates of the District, to sell suspicious or stolen property.—*Panjab Gazette*, 1878, Part I, p. 361.

As to Magistrates empowered in Madras, Bombay, and Oudh, see *Madras Gazette*, 1873, p. 717; *Bombay Gazette*, 1873, p. 16; *Oudh Gazette*, 1873, p. 3.

Where an order is made by a Magistrate, not duly empowered, for the sale of property under this section, and the order is made in good faith, the proceedings shall not be set aside merely on the ground that he was not duly empowered.—*Section 529 (h), infra*.

525. If the person entitled to the possession of such property is unknown or absent, and the property is subject to speedy and natural decay, or the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the nett proceeds of such sale.

This section corresponds with s. 415, para. 2, of Act X of 1872.

An order made under this section by a Magistrate not duly empowered, but made *bonâ fide*, will not be set aside on the ground merely of his not being duly empowered.—*Section 529 (h), infra*.

CHAPTER XLIV.

OF THE TRANSFER OF CRIMINAL CASES.

High Court may transfer case, or itself try it.

526. Whenever it is made to appear to the High Court—

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

(d) that an order under this section will tend to the general convenience of the parties or witnesses,

“or

“(e) that such an order is expedient for the ends of justice” [Act III of 1884, s. 11],

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s. 52B

it may order—

(1) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence;

(2) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction; or

(3) that any particular criminal case or appeal be transferred to and tried before itself,

“ or

“(4) that an accused person be committed for trial to itself or to a Court of Session.” [Act III of 1884, s. 11.]

When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Advocate-General, be supported by affidavit or affirmation.

When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

Nothing in this section shall be deemed to affect any order made under section 197.

Compare s. 64 of Act X of 1872 and s. 147 of Act X of 1875. The former dealt only with trials and not appeals, appeals being provided for by s. 29 of the Letters Patent. See *Situpathi v. Queen*, 1 L. R., 6 Mad., 32.

The second clause as to the manner in which an application shall be made under this section follows the case of *Queen v. Zuhiruddin*, 1 L. R., 1 Calc. (F. B.), 219; (S. C.) 25 W. R., Cr., 27.

As to the penultimate paragraph, see s. 181 of Act IV of 1877.

It is only where there is reason to suppose that a prisoner will not have a fair trial, that the High Court will transfer a case from one magisterial officer to another (*Queen v. Kisto Chunder Ghose*, 2 W. R., Cr., 58); but before the transfer of a case from one Criminal Court to another can be made in cases in

which the accused objects to the transfer, the prosecution must bring forward the very best evidence to prove that a fair trial cannot be had in the district in which the case is ordinarily triable.—*Empress v. Nobogopal Bose*, 1: L. R., 6 Calc., 491. Ch. XLIV s. 526

months been in a state of abnormal excitement about the convicted prisoner: the most conflicting views had been entertained as to his conduct and character by various officials as was apparent from the reports published from time to time in

TRANSFER OF CRIMINAL CASE—Ground for Transfer—Probability of unfair trial—Complexity of case—Transfer from one Magistrate to another—Local inquiry—Magistrate collecting evidence on local enquiry—Magistrate trying case, Competency of, to be witness—Competent witness—Examination of Magistrate trying case as a witness. Where an Assistant Magistrate with second class powers was directed by the District Magistrate to take up a case of some complexity arising out of disputed boundaries to land in which the accused were charged with rioting, trespass, mischief and theft, and where, in the course of such investigation, he held a local inquiry extending over five days, during which he made a number of notes and appeared to have made a very careful and conscientious investigation of the locality, such as would properly be made by a person whose duty it was to get at the facts with a view to lay the same before some tribunal, and during such investigation it appeared that he acquired a large amount of information with reference to the occurrence on which he had to arrive at a judicial determination, but which, by reason of the way it was acquired, he could not properly or legally consider in arriving at an ultimate decision of the case, (such information not being guarded by the safeguards by which statements on which a Judge or a Magistrate exercising judicial functions can act must be guarded), and where it was suggested that the notes so made should be put on the record, and the Assistant Magistrate tender himself while trying the case as a witness to be cross-examined by either the prosecution or the defence: *Held*, that such a course could not be allowed, and that the Assistant Magistrate ought not to try the case, but that it must be transferred to some other Magistrate exercising first class powers for disposal. Powers of Magistrates to hold local investigations and the nature of such investigations discussed. Whenever it is desirable for a Magistrate to view the place at which an occurrence, the subject-matter of a judicial investigation before him, has taken place, he should be careful to confine himself to such a view of the place as to enable him to understand the evidence placed before him, and should take care that no information reaches him with reference to the occurrence which he has to investigate beyond what he acquires by that view, and if the place of the occurrence be in dispute he would be wise in postponing his visit till all the evidence has been recorded, if under such circumstance he feels disposed to visit it at all. But where a local inquiry by a Magistrate takes the form of an investigation into the occurrence on the site of the occurrence instead of in his own court, and he takes evidence on the spot, such evidence should not be recorded unless it is protected by all the safeguards by which evidence on which a Judge may act, is protected by law.

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by virtue of that section, applicable to such British subjects, native or European.

The High Court of Bombay having been vested by notification of the Governor-General of India in Council, No. 178 of 23rd September 1874 (see *Gazette of India*, 1874, p. 483, and notes to s. 458, *supra*), with original and appellate criminal jurisdiction over European British subjects, being Christians, resident, amongst other places, at Secunderabad, outside the Presidency of Bombay, and within the territories of His Highness the Nizam of Hyderabad, the Cantonment Magistrate of Secunderabad in his character of a District Magistrate is subordinate to the High Court in criminal matters relating to Christian European British subjects in Hyderabad within the contemplation of s. 526 of the Code of Criminal

Ch. XLIV Procedure, Act X of 1882, as amended by Act III of 1884, s. 11, and the High Court possesses, by virtue of the appellate jurisdiction so vested in it, the power of transferring a criminal case pending in the Cantonment Magistrate's Court either to itself or to any Criminal Court of equal or superior jurisdiction.

In Bombay, the High Court by an order under this section transferred a case of defamation from the Court of the Cantonment Magistrate at Secunderabad to the High Court for trial, on the ground that no machinery for a trial by jury existed at Secunderabad.—*Emprass v. Edwards*, I. L. R., 9 Bom., 333.

The following cases decided under s. 147 of Act X of 1875 may be, to some extent, useful as a guide in cases coming under this section, it being borne in mind that the provisions of the present section are wider than those of the corresponding section in Act X of 1875:—

In *In re Louis*, 15 B. L. R., App., 14, the High Court, in quashing a conviction, ordered a fine which had been imposed to be refunded; but in a subsequent case (*Queen v. Hadjee Jeebun Bux*, I. L. R., 1 Calc., 354), PONTIFEX, J., held, that the Court had no power under s. 147 of Act X of 1875 to order a fine to be refunded.

It is in the discretion of the Court to order, on sufficient *prima facie* cause shown, that a case be removed without notice to the Crown.—*Queen v. Upendro-nath Doss*, I. L. R., 1 Calc., 356. From this case it seems that where no specific decision has been given, the High Court, when the case has been removed under s. 147, may either try the case *de novo* or dismiss it, on the ground that the Magistrate has come to no specific finding on which the conviction can be sustained.

In a case transferred to the High Court under s. 147 of Act X of 1875, the Court had no power to give costs.—*In re Louis*, 15 B. L. R., App., 14.

In *Malcolm v. Gasper*, I. L. R., 2 Calc., 278, where the Magistrate, after hearing the evidence for the prosecution under s. 141 of the Penal Code, decided that it did not amount to the offence charged, WHITE, J., held, that the case was not one which the Court could transfer under s. 147 of the High Courts' Criminal Procedure Act. In a subsequent case, MACPHERSON, J., ruled, that the powers of interference given to the High Court by s. 147 were not intended to be exercised in the case of an acquittal by a Magistrate, but only in the case of convictions or other orders whereby a defendant was aggrieved or injured. The section contemplated the transfer of a case before disposal.—*Corporation of Calcutta v. Bheecuram Napol*, I. L. R., 2 Calc., 290.

It is incumbent upon the Police Magistrates and all other Criminal Courts from which cases might be transferred to take notes of the evidence, so that in the event of the case being transferred, the Court might have before it the substance of the proceedings before the Magistrate.—*Per PHEAR, J., In re Louis*, 15 B. L. R., App. 14.

In the case of *Queen v. Hadjee Jeebun Bux*, I. L. R., 1 Calc., 354, the Court decided whether the case should be transferred under s. 147 on the notes of the evidence taken by the Magistrate at the trial.

Section 147 of Act X of 1875 was held to refer to a criminal proceeding, and not to a matter of a quasi-civil character.—*Reg. v. Ramdas Samaldas*, 12 Bom. H. C. R., 217.

The power of the High Court to issue a writ of *certiorari*, it was held, was not taken away by s. 147 of the High Courts' Criminal Procedure Act.—*Ibid.*

As to the extraordinary criminal jurisdiction of the High Court, see *Queen v. Ameer Khan*, 7 B. L. R., 240.

Where a Magistrate has not declined jurisdiction, but after hearing the evidence for the prosecution decided that it did not amount to the offence charged, the High Court, assuming that an error of law has been committed, has no power to issue a *mandamus* to the Magistrate to commit the defendant.—*Malcolm v. Gasper*, I. L. R., 2 Calc., 278.

The construction of s. 29 of the Letters Patent is, that the High Court has power, if in its discretion it thinks right to exercise it, to transfer the investigation or trial of any criminal offence committed in Calcutta to a Mofussil Court, which is otherwise competent to try it, or to direct the trial by the High Court of an offence committed in the Mofussil. 'Competent to investigate it' does not include competency as regards local jurisdiction, but only competency with regard to the offender, the nature of the offence, and the punishment.—*Queen v. Nabadwip Goswami*, 1 B. L. R., O. Cr., 15.

The following rule is in force in Bombay :—

"In cases (not being appeals) transferred to the High Court for trial under s. 29 of the Letters Patent, or under s. 64 of the Criminal Procedure Code, 1872, the jurisdiction shall be exercised by one or more Judges as the Chief Justice shall direct. One of the Judges of the High Court shall, in communication with the Collector of Bombay, or such other officer as the Local Government may appoint, prepare the list of assessors contemplated by s. 400 of the said Code and determine upon objections made under s. 402 of the same to the said list. A copy of the revised list shall be signed by the Judge and the Collector, or such other officer as aforesaid, and sent to and recorded by the Clerk of the Crown. The precept contemplated by s. 407 of the said Code shall be sent to the Sheriff, who shall thereupon summon the persons specified thereon."—*Bombay Gazette*, 1874, p. 330.

As to practice and rules in Bengal, see judgment of FIELD and NORRIS, JJ., in the case of *Churroo Chunder Mullick*, I. L. R., 9 Cal., 397.

See s. 287, *supra*.

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526A. If, in any criminal case or appeal, before the commencement of the hearing, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending his intention to make an application under section 526 in respect of the case, the Court shall exercise the powers of postponement or adjournment given by section 344 in such a manner as will afford a reasonable time for the application being made and an order being obtained thereon, before the accused is called on for his defence, or, in the case of an appeal, before the hearing of the appeal." [Act III of 1884, s. 12.]

527. The Governor-General in Council may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to him that such transfer will promote the ends of justice or tend to the general convenience of parties or witnesses.

The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

This section corresponds with s. 64A of Act X of 1872 (Act XI of 1874, s. 11).

528. Any District Magistrate or Subdivisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself,

District or Subdivisional Magistrate may withdraw or refer cases.

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s. 528

or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

The Local Government may authorize the District Magistrate to withdraw from the Magistrates subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

“A Magistrate making an order under this section shall record in writing his reason for making the same.” [Act III of 1884, s. 13.]

As to the first paragraph of this section, see Act X of 1872, s. 44, last paragraph, and s. 47, para. 1, as amended by s. 6 of Act XI of 1872.

The second paragraph corresponds with s. 48 of Act X of 1872.

As to transfer of cases by Magistrates, see s. 192, *supra*.

Where a case has once been made over by a Magistrate to a Deputy Magistrate for trial, the Magistrate has no jurisdiction to do anything more in the matter so long as the transfer to the Deputy Magistrate is in existence. The Magistrate may withdraw the case under this section from the files of the Deputy Magistrate.—*Queen v. Belilios*, 12 W. R., Cr., 53; (S. C.) 3 B. L. R., Apx., 151; see *Queen v. Grish Chunder Ghose*, 7 B. L. R., 513.

In the case of *In the matter of Naba Kumar Bannerjee*, 5 B. L. R., Apx., 45; (S. C.) 14 W. R., Cr., 12, a Magistrate having made over a case for trial to the Deputy Magistrate, the latter, after hearing the evidence for the prosecution, recorded his opinion that the discrepancies were so glaring that it was impossible to sustain the charge against the accused. The Magistrate thereupon removed the case from the file of the Deputy Magistrate, but the High Court interfered and ordered it to be restored.

When a case under trial is removed under this section, the whole proceedings must commence *de novo*.—*Queen v. Khan Mahomed*, 24 W. R., Cr., 53.

Magistrates of Districts should exercise the powers conferred on them only when it is absolutely necessary for the interests of justice that they should do so, and when one of the parties to a case applies to have it withdrawn from the Magistrate inquiring into or trying it, and referred to another Magistrate, the Magistrate of the District should give the other party notice of such application and an opportunity of showing cause why such application should not be granted.—*In re Umrao Singh*, 1 L. R., 3 All., 749; see also *Teucotta Shekhdur v. Ameer Majee*, 10 C. L. R., 239; (S. C.) 1 L. R., 8 Calc., 393.

The provisions of this section are wide enough to empower a District Magistrate to withdraw a case falling under s. 107, *supra*.—*In re Dinendro Nath Shanial*, 1 L. R., 8 Calc., 851.

Magistrates of Districts in the Panjab have been invested with power to withdraw classes of cases from the Magistrates subordinate to them.—*Panjab Gazette*, 1873, p. 75.

In Burma, all Magistrates of Districts are authorized to withdraw from the Magistrates respectively subordinate to them, whether in charge of divisions of districts or not, such classes of cases as they think proper.—*Burma Gazette*, 1873, Part II, p. 5.

All Magistrates of Districts in the North-Western Provinces are invested with authority to withdraw from the Magistrates subordinate to them, whether in charge of divisions of districts or not, such classes of cases as they may think proper.—*N.-W. P. Gazette*, 1873, p. 3.

In Bengal, all Magistrates of Districts were authorized to withdraw from any of their subordinate Magistrates such classes of cases as they might think proper so to withdraw.—*Calcutta Gazette*, 1873, Part I, p. 67.

If any Magistrate not empowered in that behalf erroneously, but *bonâ fide*, withdraws a case and tries it himself under this section, his proceedings shall not be set aside merely on the ground of his not being so empowered.—S. 529 (i), *infra*.

CHAPTER XLV.

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529-530

OF IRREGULAR PROCEEDINGS.

Where a trial improperly originated has properly resulted in a conviction, the High Court has power to set aside the conviction without reference to the Local Government.—*In re Nobin Chandra Banikya*, I. L. R., 8 Cal., 560, per MACLEAN, J. See note to s. 339, *supra*.

Imp. Irregularities which do not vitiate proceedings. **529.** If any Magistrate not empowered by law to do any of the following things, namely :—

- (a) to issue a search-warrant, under section 98 ;
 - (b) to order, under section 155, the police to investigate an offence ;
 - (c) to hold an inquest under section 176 ;
 - (d) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits ;
 - (e) to take cognizance of an offence under section 191, clause (a) or clause (b) ;
 - (f) to transfer a case under section 192 ;
 - (g) to tender a pardon under section 337 or section 338 ;
 - (h) to sell property under section 524 or section 525 ; or
 - (i) to withdraw a case and try it himself under section 528 ;
- erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

This section corresponds with s. 32 of Act X of 1872.

Under s. 34, cl. 9, of that Act, an order selling property under the section corresponding with ss. 524 and 525 of this Act was void if the Magistrate were not duly empowered in that behalf. Now, under cl. (h) of this section, such an order is not void by reason merely of the Magistrate not being duly empowered, provided he acts in good faith.

Clause (g) as to tender of pardon is new. See *In re Nobin Chandra Banikya*, I. L. R., 8 Cal., 560.

Schedules III and IV give the ordinary powers of Magistrates and the additional powers with which they may be invested.

Imp. **530.** If any Magistrate, not being empowered by law, irregularities which in this behalf, does any of the following vitiate proceedings. things, namely :—

- (a) attaches and sells property under section 88 ;
- (b) issues a search-warrant for a letter in the Post Office or a telegram in the Telegraph Department ;
- (c) demands security to keep the peace ;
- (d) demands security for good behaviour ;

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(e) discharges a person lawfully bound to be of good behaviour ;

(f) cancels a bond to keep the peace ;

(g) makes an order under section 133 as to a local nuisance ;

(h) prohibits under section 143 the repetition or continuance of a public nuisance ;

(i) issues an order under section 144 ;

(j) makes an order under Chapter XII ;

(k) takes cognizance under section 191, clause (c), of an offence ;

(l) passes a sentence under section 349, on proceedings recorded by another Magistrate ;

(m) calls under section 435, for proceedings ;

(n) makes an order for maintenance ;

(o) revises under section 515, an order passed under section 514 ;

(p) tries an offender ;

(q) tries an offender summarily ; or

(r) decides an appeal ;

his proceedings shall be void.

This section corresponds with s. 34 of Act X of 1872, omitting cl. (9).

Clause (d) is new.

As to cl. (h), see s. 95, *supra*.

A prisoner was committed to the Court of Session for trial in December 1872, and the record was sent to the Deputy Commissioner under Act X of 1872, which came into force on the 1st of January 1873 ; the Deputy Commissioner was no longer a Court of Session, but received powers under s. 36 to try as a Magistrate classes of cases which formerly he would have tried as a Court of Session. The Deputy Commissioner took up the case afresh as a Magistrate of the District. It was held, that this was illegal, and that he was bound to have sent the commitment on to the proper Court, and had no power, a trial being in progress, to commence a new inquiry in the same matter against the prisoner.—*The Queen v. Poorun*, 5 All., 219.

In the case of an offence tried by a Court without jurisdiction, the order of a Magistrate being void under this section, the offender, if acquitted, is liable to be retried under s. 403, and it is not necessary for the High Court to upset the acquittal before the retrial can be had.—*Empress v. Husein Gaibu*, 1 L. R., 8 Bom., 307. So where a commitment was made without jurisdiction, the Calcutta High Court treated the commitment as void, and considered it to be unnecessary that a reference should be made to have it set aside.—*Empress v. Alim Mundle*, 11 C. L. R., 55. See *Queen v. Unnath Bundhoo Banerjee*, 21 W. R., Cr., 37.

Where, on the facts found by a Magistrate, an offence is established which he cannot try summarily, he is not competent to convict for an offence made up of some only of those facts in order to give himself jurisdiction.—*In re Chunder Seekur Soohul*, 1 C. L. R., 434 ; *Empress v. Abdul Karim*, 1 L. R., 4 Cal., 18 ; (S. C.) *In re Abdul Kadir*, 3 C. L. R., 44.

As to powers of Magistrate, see Scheds. III and IV, *post*.

531. No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other Proceedings in wrong place.

proceeding in the course of which it was arrived at or passed took place in a wrong Sessions Division, District, Subdivision, or other local area, unless it appears that such error occasioned a failure of justice. Ch. XLV
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See s. 70 of Act X of 1872 and s. 24 of Act IV of 1877.

The words 'other local area' are new. The section will now meet the difficulty which was felt in the case of *Piran Ayah*, 13 B. L. R., Apx., 4; (S. C.) 21 W. R., Cr., 66, where it was held, that s. 70 of Act X of 1872 did not apply where there was an error of jurisdiction from a case being tried in a wrong province.

The High Court declined to interfere under s. 70 of Act X of 1872 with an order in a case under s. 532 of that Act in which the objection as to jurisdiction was raised. **CRIMINAL PROCEDURE CODE—ACT X of 1882, ss. 531, 532 AND 537—Commitment to Sessions Court by Magistrate having no jurisdiction over place where alleged offence was committed—Exercise of powers duly conferred.]** A Magistrate who commits a case for trial by a Sessions Court, does so in the exercise of powers duly conferred upon him, and the fact that he had no territorial jurisdiction over the place where the alleged offence was committed, and that an objection to the committal on this ground was taken before the commitment, is no ground for the Court to which the commitment is made quashing it under section 532 of the Criminal Procedure Code. *The Queen-Empress v. James Ingle* (I.L.R., 16 Bom., 200) followed. *Queen-Empress v. Abbi Reddi* 402

532. If any Magistrate or other authority purporting to exercise powers duly conferred, which were When irregular commitments may be validated. not so conferred, commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless, during the inquiry and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment and direct a fresh inquiry by a competent Magistrate.

This section corresponds generally with s. 33 of Act X of 1872. See s. 25 of Act X of 1875.

A commitment once made under s. 214 or 215 by a competent Magistrate can be quashed by the High Court only, and only on a point of law (s. 215, *supra*). As to what Magistrates are competent to commit, see s. 206, *supra*.

Section 33 of Act X of 1872, it was held, contemplated the contingency of a case which had been inquired into at the proper place, as indicated by s. 63 of that Act, being committed to the proper Court of Session by a particular Magistrate not duly empowered by law to make such commitment, and not of a case which had been inquired into a district in which it was not committed, being committed to the proper Court of Session, as indicated by that section, by a particular Magistrate duly empowered by law to make such a commitment. Consequently, where a Magistrate inquires into and commits for trial an offence which has not been committed in his district, and the Court of Session for that district accepts such com-

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mitment, because the prisoner has not been prejudiced thereby, and tries him for such offence, the proceedings are illegal *ab initio*.—*Empress v. Jagam Nath*, I. L. R., 3 All., 258. See *Empress v. Alim Mundle*, 11 C. L. R., 55.

In the case of *Empress v. Morton*, I. L. R., 9 Bom., 288, after a magisterial inquiry, a European British subject who was a public servant within the meaning of s. 197, *supra*, was committed for trial to the High Court of Bombay by the Judicial Superintendent of Railways in the Nizam's territories without any previous sanction as required by that section. It was held by a Full Bench that the provisions of the Code of Criminal Procedure applied to the Courts of the Judicial Superintendent of Railways in the Nizam's dominion held at Secunderabad, that the proceedings were irregular and without jurisdiction, and that a sanction subsequently obtained was of no effect, but that the Judge presiding at the Criminal Sessions of the High Court had power, in his discretion, to accept the commitment and to proceed with the trial of the prisoner. See note to s. 458, *supra*.

Where a commitment was made by a Sessions Judge in a case in which he had no power to make such commitment, the High Court set it aside as made without jurisdiction.—*Queen v. Unnath Bundhoo Banerjee*, 21 W. R., Cr., 37. See *Empress v. Alim Mundle*, 11 C. L. R., 55.

Where a Magistrate, on perusal of the depositions, committed a person charged with perjury in a trial without examining the witnesses for the prosecution, the commitment was held to be bad on the ground of prejudice to the accused.—*Queen v. Chinna Vedagiri Chetti*, I. L. R., 4 Mad., 227.

In *In re Khamir*, I. L. R., 7 Cal., 662; (S.C.) 10 C. L. R., 8, the High Court, on appeal, refused to set aside a conviction on an improper commitment on the ground that there had not been any actual failure of justice, though there had been grave irregularities which, if brought to the notice of the High Court before the trial, would have justified the commitment being quashed. See *In re Sagambar*, 12 C. L. R., 120.

533. If any Court before which a confession or other statement of an accused person recorded under section 164 or section 364 is tendered in evidence finds that the provisions of such section have not been fully complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and, notwithstanding anything contained in the Indian Evidence Act, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

See s. 346, last paragraph, of Act X of 1872.

This section makes an important alteration in the law as laid down in the former Code. Under that Code, the power to remedy defects in procedure in recording statements or confessions was confined to the Sessions Court, and did not enable that Court to take the evidence of the Magistrate that the accused duly made the statement or confession recorded, except in cases where such statement or confession had been made in the course of a preliminary inquiry. See *Reg. v. Bai Ratan*, 10 Bom. H. C. R., 166; *Reg. v. Amrita Govinda*, 10 Bom. H. C. R., 497; *Empress v. Munnoo Parioli*, 4 C. L. R., 137; (S. C.) *nom. Empress v. Tamoollee*, I. L. R., 4 Cal., 696; *Queen v. Chunder Bhattacharjee*, 24 W. R., Cr., 42; *Empress v. Daji Narsu*, I. L. R., 6 Bom., 288. See *Reg. v. Shivya*, I. L. R., 1 Bom., 219. By this section any Court, before which a confession or other statement recorded under s. 164 or 364 is tendered in evidence, is empowered to take evidence that such statement or confession was duly made.

Section 164 applies to any statement or confession made to a Magistrate, not being a Police-officer, in the course of an investigation under Chap. XIV, or at any time afterwards before the commencement of the inquiry or trial.

Section 364 applies to any examination of an accused person by any Magistrate other than a High Court established by Royal Charter or the Chief Court of the Punjab.

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It was held, that evidence taken under the last clause of s. 346 of Act X of 1872 (s. 364 of the present Code) ought to be by the committing Magistrate.—*Nushai Mistri v. Empress*, 1. L. R., 5 Cal., 958; (S. C.) 6 C. L. R., 353, *per WHITE and MACLEAN, JJ.* This is not so now.

534. An omission to ask any person whether he is an European British subject in a case to which the second clause of section 454 applies shall not affect the validity of any proceeding.

Omission to ask question prescribed by section 454, clause 2.

Compare s. 85 of Act X of 1872.
See notes to s. 454, *supra*.

535. No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has been occasioned thereby.

If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge shall be framed, and that the trial be recommenced from the point immediately after the framing of the charge.

The first part of this section corresponds with Expl. I of s. 216 of Act X of 1872. As to the meaning of the word 'charge,' see note to s. 226, *supra*.

As to the second part, see Expl. II to s. 216 of Act X of 1872.

Section 232, *supra*, provides:—"If any Appellate Court, or the High Court in the exercise of its powers of revision or of its powers under Chap. XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

"If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

"A is convicted of an offence under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that A had such knowledge, and he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction."

536. If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground only be invalid.

* Trial by jury of offence triable with assessors.

If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding.

Trial with assessors of offence triable by jury.

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This section corresponds with the explanation to s. 233 of Act X of 1872.

In a case where the accused in a trial by jury were convicted of an offence triable with the aid of assessors, MACLEAN, J., expressed an opinion that an accused person, who would have been entitled to an appeal on the facts, if the case had been tried with assessors, was not debarred from that right merely by the fact that the trial by jury was not invalid.—*Empress v. Mohim Chunder Rai*, I. L. R., 3 Cal., 765.

In the case of *Bhootnath Dey*, 4 C. L. R., 405, in a trial by jury before a Court of Sessions upon charges, some of which were triable by a jury and some with the aid of assessors, the jury by a majority of four to one returned a verdict of 'not guilty' on all the charges. The Judge disagreed with the jury, and directed that the accused should be kept in custody pending a reference to the High Court. Subsequently, the Judge called upon the pleaders of the accused to show cause why the accused should not be punished, the trial being treated as having been held with the aid of assessors. No cause having been shown, the Judge recorded his judgment, treating the trial as a trial with the aid of assessors, and concurring with the juror constituting the minority, he sentenced them to various periods of imprisonment. It was held, that the Judge was not competent to treat the trial as a trial with the aid of assessors and to act as he had done.

See Chap. XXIII.

537. Subject to the provisions hereinbefore contained, no finding or sentence when reversible by reason of omission in charge or other proceedings. finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account—

of any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings before or during trial or in any inquiry or other proceeding under this Code, or

of the want of any sanction required by section 195, or

of the omission to revise any list of jurors or assessors in accordance with section 324, or

of any misdirection in any charge to a jury; unless such error, omission, irregularity, want or misdirection has occasioned a failure of justice.

Compare s. 203 (para. 3), s. 283 (paras. 1 and 2), ss. 300 and 464 (paras. 6 & 7) of Act X of 1872; Act XI of 1874, s. 41; ss. 117 and 177 of Act IV of 1877; and see ss. 31 and 178 of Act IV of 1877. See also 11 and 12 Vict., c. 43, s. 9.

Failure of Justice.—As to what constitutes a failure of justice, reference may be made to the remarks of West, J., in the case of *Reg. v. Deva Dayal*, 11 Bom. H. C. R., 237, p. 238, in discussing the meaning of the word 'prejudiced' in s. 346 of Act X of 1872. "We are of opinion," he said, "that the meaning of the word 'prejudiced' in this section is unfairly affected as to his defence on the merits. The intention of the whole paragraph in which the word occurs is to remedy defects of a formal character which may have arisen from inadvertence or neglect on the part of the Magistrate, and which defects the law, and the Legislature think ought not to be made the means of culprits escaping the just penalties of his crime." As to what may amount to prejudice, see *Empress v. Anant Ram*, I. L. R., 4 All., 293; *Empress v. Niaz Ali*, I. L. R., 5 All., 17; *Empress v. Ramji Sajabarao*, I. L. R., 10 Bom., 124.

The mere circumstance that a trying Magistrate is the master of the complainant does not deprive the Magistrate of his jurisdiction, though it is expedient that such a complaint should be referred to another Magistrate.—*In re Basapa*, I. L. R., 9 Bom., 172; see *Wood v. Corporation of the Town of Calcutta*, I. L. R., 7 Cal., 322; *Dimes v. Proprietors of the Grand Junction Canal*, 3 H. L. Cas., p. 793.

CRIMINAL PROCEEDINGS—Irregularity—Irregularity prejudicing the accused—Rioting, countercharges of—Cross cases tried together—Evidence in one case considered in the other—Criminal Procedure Code (Act X of 1882), ss. 233, 239, 309, 342, 314, 537—Illegality—Fight between two parties not “transaction.”] Where two cross cases of rioting and grievous hurt were committed separately for trial before a Sessions Judge, who, having heard the evidence in the first case, heard the evidence in the second case, examined some of the accused in the one case as witnesses for the prosecution in the other and *vice versa*, and subsequently heard the arguments in both the cases together, and the opinions of the assessors (who were the same in both the cases) were taken at one time, and both the cases were dealt with in one judgment: *Held*, that this mode of trial, although irregular, did not prejudice the accused in their defence, and that under such circumstances a retrial was not made necessary by reason of such irregularity. *Queen v. Bazu*, B. L. R., Sup. Vol., 750; 8 W. R. Cr., 47, and *Queen v. Surroop Chunder Paul*, 12 W. R. Cr., 75, approved. Nor did the examination of the accused who were on their trial in one case as witnesses for the prosecution in the other affect the validity of their conviction. Observations in *Bachu Mullah v. Sia Ram Singh*, 1. L. R., 14 Cal., 358, dissented from. *Hossein Buksh v. The Empress*, 1. L. R., 6 Cal., 96, considered and distinguished. *Semble*.—A fight between two parties cannot be treated as a ‘transaction’ within the meaning of section 239 of the Code of Criminal Procedure. On the law as contained in that section, the two parties cannot regularly be charged in the same trial.

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Where the defence has been heard by a Court sitting with assessors, it is an irregularity for the Court to acquit without having asked the opinion of the assessors. In such a case, however, the High Court refused to interfere.—*In re Narain Das*, 1 L. R., 1 All., 610. Ch. XLV
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Where a prisoner was represented in the Court of Session by a pleader who had an opportunity to object to the admissibility of his statement and did not, the High Court held, that he was not prejudiced.—*Reg. v. Deva Dayal*, 11 Bom. H. C. R., 237.

This section deals only with the want of sanction necessary under s. 195. It does not touch the cases where prosecutions may have been instituted against public servants without the sanction required by ss. 132 and 197. See *Empress v. Morton*, 1 L. R., 9 Bom. (F. B.), 288; *Sharina v. Empress*, Panjab Record, 1884, p. 92.

It may be useful in dealing with cases under this section to bear in mind the rule laid down by WHITE, J., in the case of *Protap Chuander Mookerjee v. Empress*, 11 C. L. R., 25, with reference to the trial of criminal cases on appeal. The sound rule, he said, in trying a criminal appeal where questions of fact are in issue, is to consider whether the conviction is right, and in this respect a criminal appeal differs from a civil one. In the latter case the Court must be convinced, before reversing a finding of fact of a lower Court, that the finding is wrong. But see remarks of OLDFIELD, J., in case of *Empress v. Sajiwan Lal*, 1 L. R., 5 All., 386.

The section deals with the findings, sentences or orders passed by a Court of competent jurisdiction. As to proceedings tried by a Court without jurisdiction, see ss. 530—532, *supra*.

Upon a single charge of wrongful confinement, the accused raised a defence justifying the confinement, on the ground that the persons confined had been caught under circumstances which led to the belief that they had committed housebreaking by night with intent to commit theft, and the Magistrate disbelieving the defence, committed the accused to the Session, not only for wrongful confinement, but for fabricating false evidence and bringing a false charge. It was held, that by adding the additional charges, the Magistrate had really prejudged the defence on the first charge, and a conviction made by the Sessions Court was therefore set aside by the High Court.—*In re Turibullah*, 4 C. L. R., 338.

An omission to draw up a charge by a Deputy Magistrate is not such a defect as to justify the reversal of a sentence, if the Magistrate has given the accused clearly to understand the nature of the charge against him.—*Bhugwan v. Doyal Gope*, 19 W. R., Cr., 7. See *Empress v. Appu Subhuna Mendre*, 1 L. R., 8 Bom., 200.

As to irregularities in the matter of the charge, this section must be read with ss. 232 and 535, *supra*.

As to the meaning of the word "charge," see note to s. 226, *supra*.

In the case of *Kally Mohun Mookerjee*, 13 C. L. R., 117, the Court refused on revision to set the conviction aside, the only ground being want of sanction under s. 195, *supra*, there being nothing to show that there had been a failure of justice.

Where a commitment of a person discharged by a Deputy Magistrate had been wrongly ordered by a Sessions Judge under s. 296 of Act X of 1872, but no actual failure of justice had been caused by the error of the Judge, it was held, that s. 283 of that Act (s. 537 of this Code) would be a bar to the reversal of his judgment.—*In re Khamir*, 1 L. R., 7 Cal., 662; (S. C.) 10 C. L. R., 8. See *In re Giridhari Mondul*, 10 C. L. R., 46; (S. C.) 1 L. R., 8 Cal., 435.

Where a Magistrate trying an offence rejected an application that a certain person might be examined on his behalf either in Court or by commission without recording his reasons for refusing to summon such person as required by s. 362 (of Act X of 1872) [s. 257, *supra*], the conviction of the accused person was set aside.—*In re Sat Narain Singh*, 1 L. R., 3 All., 392.

Section 167 of the Evidence Act provides: The improper admission or rejection of evidence shall not be ground of itself for a new trial, or reversal of any decision in any case, if it shall appear to the Court, before which such objection is raised, that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

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Whenever a prisoner is put upon his trial, he is entitled to have the witnesses examined *de novo* if they have previously given evidence on the trial of another prisoner in the same case; and it is not sufficient to require the witnesses to identify the prisoner and to read over to them their former examination and require them to attest it.—*Queen v. Kanye Sheikh*, W. R., Sup. Vol., 38. •

In every Sessions trial, no matter how often the case has been before the Court, the witnesses must be examined *de novo* in the same manner as if the case were entirely new and the witnesses had not been examined before.—*Queen v. Sheikh Kyamut*, W. R., Cr., Sup. Vol., 1.

But when the evidence of witnesses given on a previous trial was read over and used in a subsequent trial at the express request of the prisoners, instead of the witnesses being examined *de novo*, the High Court declined to interfere, as the irregularity of procedure was one by which the prisoners were not prejudiced.—*Purmessur Singh v. Soroop Audhikaree*, 13 W. R., Cr., 40.

The error of a Deputy Magistrate in proceeding by warrant instead of by summons furnishes no ground for quashing his proceedings.—*Ancef Putney v. Ramsoonder Chucherbutty*, 1 W. R., Cr., 16.

Misreception of evidence, it has been held, is a defect or irregularity within the meaning of this section.—*Queen v. Beharee Dosadh*, 7 W. R., Cr., 7. See s. 167 of the Evidence Act.

It is irregular to allow a witness to be examined on behalf of the prosecution after the prisoner has made his defence, when the witness is not a witness to contradict any new case set up by the prisoner. Where, however, the prisoner had full notice of the evidence which was to be given by such witness and made his defence, alluding to the evidence the witness was likely to give, the Court refused to set aside the conviction, considering that the irregularity of putting the prisoner on his defence, before the witness was examined, could not be said to have caused a failure of justice.—*Queen v. Sham Kishore Holder*, 13 W. R., Cr., 36.

A conviction under s. 41 of the Excise Act without any complaint as required by s. 47 of that Act was held to be bad, the absence of the complaint not being a mere irregularity.—*Kirpal Singh v. Empress*, Panjab Record, 1883, p. 74.

Where in a summary case a Bench of Magistrates, after recording the evidence for the prosecution, postponed the hearing of evidence for the defence, and on the day fixed for hearing, another Bench of Magistrates, none of whom had been members of the former Bench, recorded the evidence for the defence, and acquitted the accused, the High Court on a reference set aside the order as being irregularly made.—*Ram Sunder De v. Rajab Ali*, 1 L. R., 12 Calc., 558. See *Sufferuddin v. Ibrahim*, 1 L. R., 3 Calc., 754; (S. C.) 2 C. L. R., 263; and *Tarada Buladu v. Reg.*, 1 L. R., 3 Mad., 112.

In the case of *Shumbhu Nath Sarkar v. Ram Kamal Guha*, 13 C. L. R., 212, in a trial before a Bench originally constituted of a Stipendiary and two Honorary Magistrates, one of the latter, after the commencement of the trial, was absent, and important evidence was recorded in his absence. On the following day he returned to the Bench and signed the final order, convicting the accused. The High Court set aside the conviction as bad on the ground of irregularity.

Where a Magistrate pronounced judgment upon evidence taken by, and the notes of, his predecessor, who had died after taking the evidence in the case and leaving notes for a judgment and of the punishment to be awarded, it was held, that the fact that the Magistrate did not have the accused brought up before him was an irregularity covered by this section.—*Kesra Ram v. Empress*, Panjab Record, 1884, p. 7.

In the case of *Jhubboo Mahton*, 1 L. R., 8 Calc., 739, irregularity not in the revision of the list of jurors, but in the selection of jurors, the Judge having selected them instead of choosing them by lot, was treated as an objection covered by the corresponding section of the old Code.

Where three prisoners, one of whom was a pleader, were tried together and convicted under s. 181 of the Penal Code of having made false statements on solemn affirmation about the same matter in the course of an inquiry into the conduct of the pleader, the conviction was set aside on the ground that the prisoners ought to have been tried separately, and that they had been prejudiced

by being tried together, and so being deprived of the evidence of each other in defence.—*Kotha Subbo Chetti*, I. L. R., 6 Mad., 252.

The omission by a Magistrate to hold a preliminary inquiry on a charge under s. 307 of the Indian Penal Code is an irregularity, and if the accused be prejudiced thereby, the proceedings should be quashed and a new trial held.—*Queen v. Mussamut Itwarya*, 14 B. L. R., 54; (S. C.) 22 W. R., Cr., 14.

Where a prisoner was charged under the Penal Code with an offence committed before the Penal Code came into operation, it was held, that this was not such an error of procedure as to vitiate the conviction so long as the punishment awarded did not exceed the legal penalty for the offence before the Penal Code became law.—*In re Mohabeer Singh*, 15 W. R., Cr., 48. So in another case, where a Magistrate convicted under certain repealed sections of a law, the High Court refused to set aside the conviction, as the conviction and sentence might have been passed under the Penal Code, and no substantial injury had been done to the accused.—*Rughoonath Dass v. Chuckerdhun Raut*, 15 W. R., Cr., 49.

Where a prisoner originally charged with murder and acquitted, was committed on the day following for trial for attempting to murder, without any witnesses being examined on the second charge, and without having had any opportunity of cross-examining the witnesses on the first charge, with respect to the second charge, it was held, that the irregularity was one which was not covered by this section, and that the prisoner had been prejudiced thereby in her defence, and the order directing a trial on the second charge was quashed and a new trial directed.—*Reg. v. Mussamut Itworya*, 14 B. L. R., 54; (S. C.) 22 W. R., Cr., 14.

Where a person summoned to answer to a charge of criminal trespass appeared and filed a written statement, and the Magistrate proceeded accordingly without recording a proceeding under s. 530 of the Code (Act X of 1872), it was held, that the irregularity was covered by s. 286 of the same Code, the rule therein laid down being intended to extend to all proceedings before Magistrates.—*Gour Mohun Majee v. Doolubh Majee*, 22 W. R., Cr., 81. But see *In re Sheikh Munglo*, 25 W. R., 76, and *Samodur Bityadhur Mohapatro v. Syamanund Dey*, I. L. R., 7 Calc., 385.

Without the consent of parties, and in absence of urgent necessity, no civil or criminal trial should proceed on a Sunday or gazetted holiday.—*H. C. O. No. 5 of 1880, Calcutta Gazette*, 1873, p. 69; *Assam Gazette*, 1880, p. 71; *Wilkins*, p. 141. The Lord's Day Act, 29 Car. II, c. 7, was repealed in India by Sched. IA of the Code of Civil Procedure (Act X of 1877), so that, apparently, Sunday is no longer a *dies non* in India. See *Queen v. Hurgobind*, 8 B. L. R., Appx., 12.

During the Dusserah and Moharrum vacations, Courts of Session must never be closed for the despatch of criminal business, except on those days only when a total cessation from all business is necessary and usual.—*C. O. No. 8, of 23rd March 1838*.

The holidays published by the High Court under s. 17, Act VI of 1871, are for observance in the Civil Courts only; the Criminal Courts, as a rule, should not be closed on days when the public treasuries are open. In any case, a trial commenced ought to be finished, although a native holiday intervenes; and Sessions ought not to be interrupted, and the commencement of trials postponed, except on days when native usage absolutely requires the intermission of all business.—*C. O. No. 1, of 28th February 1876, Wilkins*, p. 141.

As regards Mahomedan holidays, see the instructions conveyed in G. L. No. 1, of 5th January 1883. As regards members of the Brahmo Somaj, see G. L. No. 7, of 23rd August 1883.—*Ib.*

- 538. No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress or other proceedings relating thereto.

Distress not illegal, nor distrainer a trespasser for defect or want of form in proceedings.

This section corresponds with s. 185, para. 5, of Act IV of 1877.

CHAPTER XLVI.

MISCELLANEOUS.

539. Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in Chancery in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

Act X of 1875, s. 149.

540. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

Compare ss. 192 and 351 of Act X of 1872: see also Act X of 1875, s. 80; Act IV of 1877, ss. 85 and 134.

See as to process for production of evidence, s. 208, *ante*, and as to the power of a Magistrate to summon supplementary witnesses, s. 219, *ante*.

A Judge may, in order to discover or obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness or of the parties about any fact relevant or irrelevant, and may order the production of any document or thing: and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question—Act I of 1872, s. 165. Under that section, a Judge has power to ask irrelevant questions of a witness, if he does so, in order to obtain proof of relevant facts; but if he asks such questions with a view to criminal proceedings against the witness, the witness is not bound to answer, and he cannot be punished for not answering them.—*Empress v. Hari Lakshman*, I. L. R., 10 Bom., 185. The Court, however, ought not to refuse to allow the cross-examination of a witness called by it.—*Empress v. Grish Chunder Tulukdar*, I. L. R., 5 Calc., 614; (S.C.) 5 C. L. R., 364.

Witnesses summoned on behalf of the prosecution and not called ought to be tendered for cross-examination by the other side.—*Ibid.* This has been the practice in Sessions Courts and High Courts; but neither in India nor in England is the prosecution bound to tender at the Sessions witnesses summoned on behalf of the prosecution or called before the committing Magistrate.—*Emp. v. Knight* (unreported, July 1886), *per* O'KINEALY, J.

In acting under s. 165 of the Evidence Act, a Judge or Magistrate would do well to bear in mind the remarks made by the Court (GARTH, C. J., and MACLEAN, J., in the case of *Noor Buz Kazi*, 7 C. L. R., 385; (S.C.) I. L. R., 6 Calc., 279; "We find," the Court said, "that, on examination-in-chief being finished, the Judge questioned almost all the witnesses at considerable length upon the very points to which he must have known that the cross-examination would certainly and properly be directed.

The result of this, of course, was to render the cross-examination by the prisoner's pleader to a great extent ineffective, by assisting the witnesses to explain away in anticipation the point which might have afforded proper ground for useful cross-examination. It is not the province of the Court to examine the witnesses, unless the pleaders in either side have omitted to put some material question or questions, and the Court should, as a general rule, leave the witness to the pleaders to be dealt with as laid down in s. 138 of the Evidence Act. The Judge's power to put questions under s. 165 is certainly not intended to be used in the manner which we have had occasion to notice in the present case."

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s. 541

It is entirely within the discretion of a Magistrate conducting a trial in a warrant-case to admit evidence on behalf of either side at any stage of the trial, but the Magistrate, in exercising the discretion conferred on him by this section, ought to have good reason for allowing witnesses on the part of the prosecution to be interposed in the midst of the case of the accused.—*Queen v. Kassy Singh*, 21 W. R., Cr., 61.

The High Court, as a Court of revision, cannot say that a Sessions Judge is wrong in point of law, because he does not, in the exercise of his discretion, postpone a case for the evidence of a witness.—*Queen v. Rathoo Janu*, 12 W. R., Cr., 44. Under s. 344, *supra*, the Court has power to postpone or adjourn proceedings, if from the absence of a witness or any other reasonable cause it considered it advisable. See *Empress v. Sagambar*, 12 C. L. R., 120.

A person who has been suspected and charged with an offence, but discharged for want of evidence, may be afterwards admitted as a witness for the prosecution.—*Queen v. Behary Lall Bose*, 7 W. R., Cr., 44.

In forwarding an application or summons for the attendance of a witness residing in a Native State, care should be taken to give such a description of him that he may be easily identified. Thus, for instance, besides the person's name and father's name, the requisition should indicate his age, caste, and village, and it should be mentioned if his village is in the neighbourhood of any well-known town. The probable time during which the witness will be detained should also be stated, and in fixing the date, when the appearance of a witness is required, reasonable time should be given, so as to allow of his being found and sent off. When practicable, the batta allowed by Government orders for the expenses of witnesses should be transmitted at the time of sending the requisition.—*Bom. H. C. Cir.*, 41.

541. Unless when otherwise provided by any law for

Power to appoint the time being in force, the Local Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

Compare Act X of 1872, s. 88, which only provided for European British subjects.

In Bengal, the following jails have been appointed as places in which European British subjects may be confined:—The Presidency Jail, Hazareebagh Penitentiary, the jails at Bhaugulpore, Midnapore, Rajshahye, Cachar, Dacca, Darjeeling, Chittagong, Cuttack, Tezpor, and Patna, and the lock-up at Dinapore.—*Calcutta Gazette*, 1873, Part I, pp. 68, 787.

• By a Notification dated 20th January 1870, all central jails in Bengal were appointed as places to which persons sentenced to transportation might be sent.—*Gazette of India*, 1870, p. 50.

The central prison at Lucknow has been appointed as a place to which persons under sentence of transportation may be sent.—*Gazette of India*, 1872, p. 846.

The city jail at Puna, the jail at Yerrowda near Puna, the district jail at Karachi, and the jail at Aden have been appointed to be places for the confinement of European British subjects.—*Bombay Gazette*, 1873, p. 99.

The jail for females at Ahmedabad is a place to which females sentenced to transportation in Guzerat in the Bombay Presidency may be sent. And the jail at

Ch. XLVI Tanna is a place to which females sentenced to transportation in other parts of the
secs. Bombay Presidency than Guzerat may be sent.—*Bombay Gazette*, 1875, p. 754.
541A-542.

The district jails at Ahmedabad, Surat, and Satara have been appointed as places for the confinement of European British subjects sentenced to terms of imprisonment not exceeding one month; and the district jail at Karwar, as a place for the confinement of persons of this class sentenced to terms of imprisonment not exceeding three months.—*Bombay Gazette*, 1874, p. 297.

The following places in the Panjab have been appointed as places of imprisonment for European British subjects:—Lahore Central Jail and the district jails of Peshawar, Rawal Pindi, Multan, Ambala, and Delhi.—*Panjab Gazette*, 1873, p. 76.

Under s. 88 of Act X of 1872, the following places were appointed for the confinement of European British subjects sentenced to imprisonment in the Madras Presidency:—

The Madras Penitentiary.

The European prison at Ootacamund.

| The central jail at Rajamundry. | | The district jail at Bellary. |
|----------------------------------|---------------|-------------------------------|
| " | Salem. | " |
| " | Coimbatore. | " |
| " | Trichinopoly. | " |
| " | Vellore. | " |
| " | Cannanore. | " |
| The district jail at Berhanpore. | | " |
| " | Vizagapatam. | " |
| " | Rajamundry. | " |

—*Mad. Notifications*, Dec. 21st, 1872, and Jan. 4th, 1873, Weir, p. 75.

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail.

"541A. (1) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

"(2) When a person is removed to a criminal jail under sub-section (1), he shall, on being released therefrom, be sent back to the civil jail, unless either—

"(a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure; or

"(b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure."—Act X of 1886, s. 15.

542. Notwithstanding anything contained in the Prisoners' Testimony Act, 1869, any Presidency Magistrate desirous of examining, as a witness or an accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail

Power of Presidency Magistrate to order prisoner in jail to be brought up for examination.

requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

Act IV of 1877, s. 139.

543. When the services of an interpreter are required

Interpreter to be bound to interpret truthfully. by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Act X of 1872, s. 422; Act X of 1875, s. 70. As to the interpretation of evidence to the accused or his pleader, see s. 361, *ante*, and Indian Oaths' Act, X of 1873, s. 5.

544. Subject to any rules made by the Local Government

Expenses of complainants and witnesses. with the previous sanction of the Governor-General in Council, any Criminal Court may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

Compare Act X of 1872, s. 421, substituting the words 'inquiry, trial or other proceeding' for 'trial.' See also Act X of 1875, s. 116; Act IV of 1877, s. 245.

The following rules as to the expenses of complainants and witnesses are in force in the various Presidencies:—

Bengal.

1. The Criminal Courts are authorized to pay at the rates specified below the expenses of complainants or witnesses (1) in cases in which the prosecution is instituted or carried on by, or under the orders, or with the sanction, of the Government, or any Judge, Magistrate or other public officer, or in which it shall appear to the presiding officer to be directly in furtherance of the interests of the public service; (2) in all cases entered in column 5 of the schedule appended to the Criminal Code as not bailable; and (3) of witnesses in all cases in which they are compelled by the Magistrate of his own motion to attend under the provisions of s. 351 of the Code (s. 540 of this Code).

2. No payment shall be made by Government to witnesses summoned at the instance of the complainant under s. 361 (244), unless the prosecution appear to the Court or Magistrate to be in furtherance of the interest of public justice; but under this section the Magistrate may require the complainants to pay their expenses.

Rate of payment:

(a) For the ordinary labouring class of natives, 2 annas per diem, together with actual railway fare by the lowest class:

(b) For natives of higher ranks in life, third class railway fare and 4 annas per diem for subsistence:

(c) For Europeans and natives of superior rank, second class railway fare and a sum not exceeding 1 rupee per diem for subsistence:

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(d) For witnesses following any profession, such as medicine or law, a special allowance according to circumstances:

(e) For Government servants, actual travelling expenses only:

(f) In districts where no railway exists in part of Eastern Bengal, and where the only mode of travelling is by water, and in cases where persons travel by rapid dak by road, the actual expenses up to a minimum limit of Rs. 2 for boats per diem and 4 annas a mile for travelling by road may be paid, subject to the proviso that the travelling allowance is only to be given where the journey could not have been performed on foot, or in case of persons whose age, position, and habits of life render it impossible for them to walk.

Officers will be held responsible that parties of witnesses are brought to Court together, as far as possible, so as to save expense. Each person should not be allowed to charge for his own boat; and if a passage is offered him with others, he will have no claim for travelling allowance.

4. The number of days which should be allowed for the passage to and fro may be determined by the officer ordering payment in each case. For this purpose a table should be prepared and kept in each Court, showing the distance of each thannah from the sudder station and subordinate station, and the number of intermediate ferries to be crossed; the existence or absence of roads or other ways being also noted in the table.—*Calc. Gazette*, 1873, p. 742.

"The presiding officer of any Criminal Court is authorized to pay the reasonable expenses of the complainants and witnesses in any bailable case which, in the opinion of that officer, has been instituted in the interests of public justice."—*Bombay Gazette*, 1875, p. 101.

All witnesses and prisoners may be conveyed by rail at the expense of Government, wherever there may be a railway available.

Subsistence-money is to be paid day by day to each witness as it becomes due.—*Bom. H. C. Cir.*, 42.

Witnesses from Native States.

In forwarding an application or summons for the attendance of a witness residing in a Native State, care should be taken to give such a description of him that he may be easily identified. Thus, for instance, besides the person's name and father's name, the requisition should indicate his age, caste, and village, and it should be mentioned if his village is in the neighbourhood of any well-known town.

The probable time during which the witness will be detained should also be stated: and in fixing the date, when the appearance of a witness is required, reasonable time should be given, so as to allow of his being found and sent off.

When practicable, the batta allowed by Government orders for the expenses of witnesses should be transmitted at the time of sending the requisition.

By these arrangements it is hoped that a greater degree of punctuality with regard to the attendance of witnesses from Native States will be secured; and the Court consider it desirable that officers should (when it is possible) avoid summoning such witnesses for the preliminary inquiry before the Magistrate in those cases where their evidence, though necessary before the Sessions Court, is not indispensable for the purpose of commitment.—*Bom. H. C. Cir.*, 41.

Bombay.

The following rules for regulating the expenses of complainants and witnesses attending criminal trials at the Court of the Presidency Magistrates are in force in Bombay:—

I. The Presidency Magistrates' Courts are authorized to pay at the rates specified below the expenses of complainants or witnesses (1) in cases in which the prosecution is carried on by, or under the orders or with the sanction of, the Government, or any Judge, Magistrate, or any other public officer, or in which it shall appear to the Presidency Magistrate to be directly in furtherance of the interests of the public service; (2) in all cases entered in column 5, sched. ii, appended to the Presidency Magistrates' Act, 1877, as not bailable; and (3) of witnesses in all cases in which they are compelled by the Magistrate of his own motion to attend under the provisions of s. 134 of the Presidency Magistrates' Act, 1877.

(a.) European and East Indian witnesses from the mofussil,* when summoned by a Presidency Magistrate's Court to give evidence, are to be allowed their actual expenses for carriage when the same are not in excess of six annas a mile. They are also to be allowed a sum not exceeding Rs. 2-8 a day for subsistence, if they demand the same. Ch. XLVI
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* Any place outside the limits of the town of Bombay, but within the Presidency of Bombay; or any place outside the local limits of the ordinary original civil jurisdiction of the High Court at Bombay, but within the Presidency of Bombay.

by a Presidency Magistrate's Court to give evidence, are to be allowed their actual expenses for carriage when the same are not in excess of six annas a mile. They are also to be allowed a sum not exceeding Rs. 2-8 a day for subsistence, if they demand the same.

(b.) As a general rule, native witnesses of the better class, as patels, panderpeshas, merchants, vakeels, and persons of corresponding rank, as well as all native witnesses who are in no way concerned in the cases in which their evidence is given, but whose evidence is required for furthering the ends of justice (such as attesting witnesses to depositions and inquest reports, provided they can read and write), are to be allowed, when they are summoned from the mofussil, six annas a day as subsistence-money, and they are also to receive railway and other travelling expenses that have been actually incurred by them, provided the same be reasonable.

(c.) Native witnesses of the class of cultivators and menials, who would not, under ordinary circumstances, voluntarily incur any expense on account of special lodging when away from home, are to be allowed, when they are summoned from the mofussil, subsistence-money at the rate of four annas a day, and are also to receive railway and other travelling expenses actually incurred by them, provided the same be reasonable.

II. Peculiar cases (that is, cases of witnesses summoned from the mofussil not coming under the operation of cls. (a), (b), and (c), of Rule 1) are to be dealt with according to their merits, and at the discretion of the Court from which subsistence-money or travelling allowance is demanded.—*Bombay Gazette*, 1878, p. 608.

Madras.

I.—The Criminal Courts are authorized to pay at the rates specified in Rule III the expenses of complainants and witnesses in cases in which the prosecution is instituted or carried on by, or under the orders or with the sanction of, the Government, or of any Judge, Magistrate, other public officer, or when it shall appear to the Judge or Magistrate presiding over such Court to be directly in furtherance of the interest of public justice; also in cases entered in column 5 of sched. iv appended to the Code of Criminal Procedure as not bailable; and in all cases in which the witnesses are compelled to attend by a Magistrate under the provisions of Chap. XXVI of the Code.

II.—For the purposes of these rules, Europeans, East Indians, and natives shall be divided into three classes, and the Judge or Magistrate before whom they are required to appear either as complainants or witnesses shall be careful to fix the class with the due regard to the station in life occupied by each complainant or witness.

III.—Travelling allowance and batta shall be paid at the rates specified below:—

| | EUROPEANS AND EAST INDIANS. | | | NATIVES. | | |
|-------------------------|-----------------------------|-------------------|-------------------|----------------------------|-------------------|-------------------|
| | 1st class. | 2nd class. | 3rd class. | 1st class. | 2nd class. | 3rd class. |
| Travelling allowance— | | | | | | |
| By rail | 1st class fare. | 2nd class fare. | 3rd class fare. | 1st class fare. | 2nd class fare. | 3rd class fare. |
| By road | 8 as. per mile. | 4 as. per mile. | 6 as. per mile. | 6 as. per mile. | 2 as. per mile. | 2 as. per mile. |
| By sea or canal ... | Actual expense of passage. | | | Actual expense of passage. | | |
| Batta not to exceed ... | 3 rupees per diem. | 1 rupee per diem. | 8 annas per diem. | 1 rupee per diem. | 8 annas per diem. | 4 annas per diem. |

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IV.—The distance for which mileage, and number of days for which batta, should be allowed for the journey to and from the station at which the Court is held and for attendance at Court, shall be determined by the Judge or Magistrate ordering the payment in each case.

V.—All bills for travelling allowance and batta to complainants and witnesses attending before the Courts of Magistrates of the second or third class shall be scrutinized by the Magistrate of the Division in which such Courts are situate before the charges, included in them, are finally passed.

VI.—Whenever a Magistrate dismisses a case as frivolous or vexatious under s. 209 of the Code of Criminal Procedure (s. 250 of this Act), no travelling allowance shall be granted to the complainant in such case.—*Madras Gazette*, 1873, p. 1096.

North-Western Provinces.

The Criminal Courts are authorized to pay at the rates specified below the expenses of complainants and witnesses;—*first*, in all cases, whether non-bailable or bailable, in which the prosecution is instituted or carried on by, or under the orders or with the sanction of, the Government, or of any Judge, Magistrate, or other public officer; *secondly*, in all cases entered in column 5 of the schedule appended to the Criminal Procedure Code as not bailable, when it shall appear to the presiding officer to be directly in furtherance of the interests of public justice; *thirdly*, in bailable cases, in which the presiding officer of the Court, if a Magistrate of the first class or in which the Magistrate of the District, on the recommendation of any Magistrate of the second or third class, considers that in the interests of public justice such payment is required; *fourthly*, in all cases in which the witnesses are compelled to attend by the Magistrate, under the provisions of s. 351 of the Code (Act X of 1872).

The rates referred to in the foregoing rule are as follows:—

(a.) For the class of natives who ordinarily attend the Courts, two annas per diem, *plus* third class railway fare, if the journey be made by rail.

(b.) For natives of higher rank in life, and for Europeans and Eurasians not coming under the next rule, the actual cost of conveyance (not exceeding six annas a mile) or second class railway fare, *plus* one rupee a day for subsistence.

(c.) For Europeans and Eurasians following any profession, such as law or medicine, indigo-planters and the like, actual expenses for conveyance (not exceeding eight annas a mile), or first class railway fare, *plus* an allowance not exceeding Rs. 5 per diem, the amount of the allowance to be fixed by order of the Court before which they appear.

(d.) For Government servants, actual travelling expenses only.

The number of days which should be allowed for the passage to and fro will be determined by the officer ordering the payment in each case. For this purpose a table should be prepared and kept in each Court, showing the distance of each *thana* from the sudder station and subordinate stations, the number of intermediate ferries to be crossed, and the existence or absence of roads or waterways.—*N.-W. P. Gazette*, 1875, p. 1076.

Punjab.

I.—The Criminal Courts are authorized to pay at the rates specified below the expenses of complainants and witnesses (1) in cases in which the prosecution is instituted or carried on by, or under the orders or with the sanction of, the Government, or any Judge, Magistrate, or any other public officer, or in which it shall appear to the presiding officer to be directly in furtherance of the interests of the public service; (2) in all cases entered in column 5 of the schedule appended to the Criminal Procedure Code as not bailable; (3) in all cases which are cognizable by the police; and (4) of witnesses in all cases in which they are compelled by the Magistrate of his own motion to attend under Chap. XXVI of the Code of Criminal Procedure. (See s. 540, *supra*.)

II.—No payment shall be made by Government to witnesses summoned at the instance of the complainant, unless the prosecution appear to the Court or Magistrate to be in furtherance of the interests of public justice; but under this section the Magistrate may require the complainants to pay their expenses.

(a)—*Rates of subsistence allowance, that is, allowance for each day's necessary absence from residence and attendance at the Court:—* Ch. XLVI
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Natives.

- (a) For the ordinary labouring class, two annas per diem.
- (b) For witnesses of a somewhat higher grade, four annas per diem.
- (c) For witnesses not included in classes (a) and (b), a sum not exceeding Re. 1 per diem.

Europeans.

- (d) For ordinary European workmen, a sum not exceeding Re. 1 per diem.
- (e) For European tradesmen and other Europeans of similar rank, a sum not exceeding Rs. 3 per diem.

(f) For witnesses of either nationality not coming within the scope of the above-mentioned classes, a special allowance according to circumstances.

III.—The Court in which a complainant or witness appears shall determine the class under which the complainant or witness shall be ranked.

(b)—Travelling Rates.

When the journey is made by rail, for classes (a) and (b), third class fare.

For class (c), second class fare.

For class (d), second or third class fare, at the discretion of the Court.

For class (e), second class fare.

For class (f), the fare actually paid.

IV.—When the journey is made otherwise than by rail, the necessary and actual expenses of carriage may be paid at the discretion of the Court; provided the expense incurred does not exceed eight annas a mile, and provided that the journey could not have been made on foot, or in the case of persons whose age, position, or habits of life render it impossible for them to walk. To natives in class (c) and Europeans in class (f) a further sum may be allowed to cover the cost of carriage-hire to and from Court on the days of attendance at Court. (For rules as to fees of medical witnesses, see notes to s. 509, *supra*.)

Expenses of witnesses in trials before the Chief Court.

All disbursements on account of expenses of complainants and witnesses attending criminal trials before the Chief Court will be made by the committing Magistrate and will be adjusted by him.

The committing Magistrate will determine the class to which each person belongs.

II.—Unless there should be any special reason in any particular case, complainants and witnesses travelling at the public expense cannot be allowed to travel by road and charge accordingly, when the journey can be accomplished more cheaply and expeditiously by rail.

III.—The committing Magistrate, when despatching complainants and witnesses to the Chief Court, will instruct them to report themselves to the Registrar of the Court on their arrival at Lahore, and will at the same time report to that officer—

a.—The name of each complainant and witness.

b.—The class to which he belongs.

c.—The date of his departure to attend at the Chief Court.

d.—Whether any advances have been made to him to enable him to reach Lahore; and if so, the amount of such advances.

IV.—When the trial is concluded, the Registrar of the Chief Court will intimate to the committing Magistrate the date of the arrival of the complainants and witnesses at Lahore, and the date on which it was possible for them to quit the station. The boarding allowance at Lahore will cease as soon after the trial as the means of quitting the station becomes available.

V.—The committing Magistrate may make reasonable advances to complainants and witnesses to enable them to reach Lahore; and, when necessary, the Registrar of the Chief Court will make advances to them at Lahore to enable them to return to their homes. Care should be taken in making these advances that a larger sum is not paid to any complainant or witness than he is entitled to receive under these rules.

VI.—Advances made by the Registrar under the preceding rule will be recovered at once from the committing Magistrate, who will include the same in his bill.

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VII.—When all the expenses to which complainants and witnesses are entitled under these rules have been paid, the committing Magistrate will submit a bill for the same, supported by necessary vouchers, to the Registrar of the Chief Court for countersignature. The Chief Court's countersignature will be sufficient authority to support such charges in the public accounts.

VIII.—In trials before the Chief Court in the exercise of its original criminal jurisdiction, the expenses of only those witnesses for the defence whom the presiding Judge may consider material will be paid out of the public funds; and prisoners on being committed for trial should be warned to this effect. Should any witness be sent up to the Chief Court for the defence whom the presiding Judge may consider not material, the Registrar will certify the same to the committing Magistrate, who will thereupon decline to pay his expenses out of the public funds.—*Smyth*, p. 123.

Burma.

In Burma, the undermentioned rule has been substituted for Rule VI of the sanctioned Rules for the payment of expenses of complainants and witnesses:—

VI.—In cases committed to the Recorder of Rangoon, or a Court of Sessions, the committing Magistrate will note in the list of witnesses the class to which each belongs, and will, on application, advance to any witness, on account of expenses, a sum not exceeding that to which the witness would be entitled under these rules up to the date fixed for the trial. Intimation of such advance shall at once be given by this committing Magistrate to the Court to which the commitment has been made, and the said Court shall, at the conclusion of the trial, deduct the amount so advanced from the sum found to be payable to the witness under Rule V.—*Burma Gazette*, 1875, Part II, p. 189.

545. Whenever under any law in force for the time being a Criminal Court imposes a fine, or confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(a) in defraying expenses properly incurred in the prosecution;

(b) in compensation for the injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit.

If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

Act X of 1872, s. 308, paras. 1, 2, and 3; Act X of 1875, s. 106; Act IV of 1877, s. 186.

The award of compensation should be a part of the sentence and order made upon a conviction for an offence of the nature specified therein, and should be founded upon a statement of loss, damage, or expenses, as the case may be, ascertained at the trial (*Queen v. Gour Churn Doss*, 11 W. R., Cr., 53); and the Court should record under what section, or on what grounds, it orders a portion of the fines inflicted on prisoners to be made over to the complainant.—*Queen v. Bissonath Mundle*, 2 W. R., Cr., 58. An award of a portion of the fine as compensation after judgment has been pronounced and the fine credited to Government is illegal.—*Mad. H. C. Pro.*, 13th March 1878, *Weir*, p. 6.

A Magistrate cannot direct that a portion of a fine inflicted under s. 434 of the Indian Penal Code be paid to an Amin for the purpose of paying the expense of his being deputed to restore landmarks destroyed by the opposite party. The

fine, or a portion of it, can only be paid to the person who has suffered by the offence, or as compensation for expenses incurred in prosecuting the case.—*Queen v. Moorut Loll*, 6 W. R., Cr., 93. So compensation cannot be given to the heirs of a person who has been killed.—*In re Roop Lall Singh*, 10 W. R., Cr., 39.

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A Magistrate cannot, under this section, order payment of compensation to the complainant in addition to the fine.—*Mohesh Mundul v. Bholanath Mundul*, 3 C. L. R., 404.

An order awarding compensation to the innocent purchaser of property found to have been stolen is not authorized by this section.—*Mad. H. C. Pro.*, 3rd Dec. 1872, *Weir*, p. 6; *Queen v. Alexander Reddon*, 1. L. R., 6 Mad., 286.

No fee is chargeable in advance on any process of a Criminal Court in a case in which the prosecution is on the part of Government; but it is competent to any Magistrate in such case, if the accused is convicted, to order that such fees shall be paid by the accused or any of them in like manner as if such fees had been paid by the prosecutor in the first instance.—22 W. R., Rules, 12.

546. At the time of awarding compensation, in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

Payments to be taken into account in subsequent suit.

Act X of 1872, s. 308, last paragraph; Act X of 1875, s. 106, last paragraph. The expression 'taken into account,' which occurred also in s. 308 of Act X of 1872, was held to mean that the compensation awarded by the Magistrate was to be taken into account by the Court in a subsequent civil suit, not that it was to be afterwards deducted from the damages awarded.—*Love v. Ainsworth*, 22 W. R. (Civil), 336.

547. Any money (other than a fine) payable by virtue of any order made under this Code shall be recoverable as if it were a fine.

Moneys ordered to be paid recoverable as fines.

This is new. As to recovery of fines, see ss. 386—389, *supra*.

An order for maintenance under s. 488, is by that section made enforceable in the same manner as fines are recoverable.

548. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith: Provided that he pay for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

Copies of proceedings.

Compare Act X of 1872, ss. 201 and 276; Act XI of 1874, s. 25; Act X of 1875, s. 13; Act IV of 1877, s. 170.

All prosecutors whose charges are dismissed are affected by the order of discharge, and are, therefore, entitled to obtain copies of the order made by, and of the depositions taken before, the Magistrate.—*Bank of Bengal v. Dinonath Roy*, 1. L. R., 8 Calc., 166; (S. C.) 10 C. L. R., 190.

Copies of charges, depositions, final orders, &c., exempted from stamp-duty in the case of appellant-prisoners.—In the exercise of the powers conferred on him by s. 35 of the Court-Fees Act, 1870 (No. VII), the Governor-General in Council is pleased to exempt from stamp-duty copies of final sentences or orders passed by Criminal Courts which parties, desirous of appealing from such sentences or orders,

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are required by s. 416 (529) of the Code of Criminal Procedure to file with their petition of appeal, provided that the party who is desirous of appealing is in confinement under the operation of the sentence or order at the time that he applies for a copy of the same.

This exemption will also extend, under the same circumstances, to copies of the judgment or reasons for passing or making such sentence or order as above.—*Notification, Government of India, No. 2520 of 5th April 1872, Wilkins, p. 117. See notes to s. 371, supra.*

Again, in exercise of the power conferred by s. 35 of the Court-Fees Act (VII of 1870), the Governor-General in Council was pleased to remit the fees leviable on copies of depositions furnished to accused persons under s. 201 (548) of Act X of 1872, and on a copy of the judgment or order passed by a Criminal Court, and of a Judge's charge to the jury furnished under s. 276 (548) of Act X of 1872, to any person affected by such judgment or order, provided that such person is in jail, or the Court, for some special reason, sees fit to grant such copy free of expense.—*Gazette of India, 1873, p. 520.*

Charges for authenticated and unauthenticated copies.—(a.) In all Criminal Courts, a uniform charge shall be made for the preparation of copies, whether certified or uncertified, at the rate of four annas per folio. This term, it is to be carefully explained to all subordinate officers, merely denominates a certain quantity of manuscript; the folio to consist of 150 words English, or of 300 words vernacular, four figures counting as one word.

(b.) It is intended that this charge should eventually be levied by means of an impressed stamp of four annas on each sheet of paper corresponding with the folio to be provided by the applicant for a copy. The preparation locally of special stamps for the purpose has been authorized by the Government. Some delay is, however, likely to occur in obtaining paper of the proper size and description. Till such stamps are available, sheets bearing each an impressed (non judicial) stamp of two annas will be used for the preparation of the copies. Each of these sheets is intended to contain half a folio—that is, 75 words English, or 150 words vernacular. As there are 15 lines in each sheet, no line should contain more than 5 words English, or 10 words vernacular.

(c.) All copies, whether authenticated or unauthenticated, must in future, before issue, be examined by a salaried officer.* The copies themselves will in all cases be made by section-writers, who will be remunerated at the rate of two annas per folio.

(d.) Half the charge of four annas per folio, levied by means of the impressed stamp, represents the payment to Government on account of the salary of examiners, cost of paper, &c.; the other half will represent the earnings of the section-writers, whose accounts will be made up monthly, and the amount due to each paid out of contingencies. These payments must be checked at the time with the upper part of each stamp, which, when the copy is ready, must be torn off each sheet, along the perforated line, and then endorsed with the copyist's name, and kept till the end of the month. Care must be taken to see that nothing in excess of half the amount realized in stamps is paid away.

(e.) To prevent the risk of stamped slips being used more than once, the officer passing the copyist's account will, after checking it as directed, tear the slips to pieces and cause them to be burnt in his presence. A certificate that this has been done must be attached to the contingent bill on which the copyist's fees are drawn.

(f.) To protect the interests of the Government, care must be taken to see that all copies issued from the Courts are prepared on the proscribed stamp paper; they must be written on one side of the sheet only, and must not contain more than the authorized number of words. On the other hand, care must be taken to see that applicants are not imposed upon by the copyists spreading their writing over a larger number of sheets than is necessary. By insisting on the number of lines in each sheet being uniform, control may easily be exercised in this matter, the number of words in a few of the lines in each folio being checked. The

* The duty of examining copies should, as a rule, be entrusted to the Head Clerk or Sheristadar: but where this is not possible, the Judge of the Court should make any other suitable arrangement, except that the copyists must not be allowed to examine for each other.—*Calc. H. C. O. (Civil) No. 8 of 29th June 1875, Wilkins, p. 136.*

business of a copyist is (like most other occupations) one calling for skill and greatly dependent for its successful practice on experience: copyists, therefore, must possess or acquire skill in their business, or they ought not to be retained. Ch. XLVI
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(g.) When an applicant requires his copies to be furnished on the day of application, an extra fee of one rupee* shall be charged on all copies so furnished, to be levied from him by a court-fee stamp, which should be affixed to the application for the copy and be entered in the register for court-fee stamps. Care, however, is to be taken that other applicants for copies do not materially suffer by the arrangement. If the granting of other copies be much delayed by this rule, an extra hand ought to be told off to furnish their copies.

(h.) Under ordinary circumstances, the time for furnishing the copies required shall not be later than 1 p.m. of the fifth open day after the presentation of the application.

(i.) In the case of authenticated copies, the court-fee chargeable under the Court-Fees Act should be levied by affixing the necessary stamp to the first folio of the copy.

(j.) In the case of maps and plans, no general rule can be laid down. In each case a charge will have to be fixed with reference to the difficulty or intricacy of the work to be done. Half will be paid to the copyist, and half credited to Government on account of examination fees and cost of materials.—*Calc. H. C. C. O. No. 35 of 1st October 1880, Wilkins*, pp. 135-139.

Copies of convictions and sentences of persons in the Military Department.—Judicial Commissioners, Sessions Judges, and Magistrates will forward to the Military Department of the Government of India a copy of the conviction and sentence in all cases in which persons serving under the Government of India in that Department are convicted in a Criminal Court.—*Calc. H. C. C. O. No. 6 of 17th July 1871, Wilkins*, p. 139.

Copies of letters and resolutions of the High Court.—Applications made to the local authorities for copies of any letters from, or resolutions passed by, the High Court, must be referred to the Court for orders. Copies of such documents may not be granted by the local authorities. This rule is not to be considered to apply to the sentences of the High Court in criminal trials.—*Calc. H. C. C. O. No. 160 of 19th April 1844, Wilkins*, pp. 139-140.

Copy of judgment of Sessions Judge how and for what purpose obtainable by District Magistrate.—Whenever an application is made by the Magistrate of the District to the Sessions Judge for a copy of any of the proceedings before the Court of Session, the Judge shall permit a copy to be made by any person whom the Magistrate may depute for that purpose. Such copies will be granted only for the information and guidance of Magistrates and committing officers, who are not at liberty to cavil at the judgment of the Sessions Court, or enter into any discussion with the Judge upon its merits.—*Calc. H. C. C. O. No. 1 of 8th January 1864, Wilkins*, p. 140.

The following rules are in force in Bombay :—

I.—Every complainant shall, upon showing good cause, be entitled to receive certified copies of depositions and all documents recorded in evidence in the case. Such copies shall be made at the expense of the person applying for them.

II.—Where a Magistrate is unable to procure a clerk to make a copy which any person is entitled to receive, he should cause it to be made by the establishment of the Magistrate of the District.—*Bombay Gazette*, 1879, p. 471.

Rules regarding copying fees in Criminal Courts :—

I.—No fee should, under any circumstances, be taken for any copy which the person receiving it is entitled by law to receive *gratis*.

II.—All copies should be not merely correct, but should also be made in a clear clerk's hand. The practice of allowing schoolboys and domestics to make copies, which are scarcely legible, should be everywhere discontinued.

III.—The Sessions Judge or the District Magistrate should prescribe the fees to be charged for copying every kind of document in the Sessions Court or the magisterial Court, and may, if necessary, prescribe different rates of fees for different Courts. Provided that the fees charged for copying shall not exceed the following rates :—

* This is a fee for credit to Government, and no part of it is payable to the copyists.

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In the case of English copies, two annas per 100 words.

In the case of vernacular copies, half anna per 100 words.

In the case of certified copies, an additional half anna per 100 words, for examining and comparing.

IV.—The fees for making each copy may be paid to the particular clerk by whom each document is prepared; or all the fees paid in each Court for copies collected during the month, may be distributed at the end of the month, at the discretion of the presiding Judge or Magistrate, amongst the persons employed by him as copyists.

V.—Copies may be made by any competent person, whether he be a member of the Court establishment or not. Provided that no permanent member of the Court establishment shall make copies for which fees are charged during the time known as 'office hours,' nor when his services are otherwise required, by his superior officer.—*Bombay Gazette*, 1881, p. 389.

A copy of the reasons recorded by any Criminal Court, under s. 429, for passing a sentence or final order in a case, shall be furnished without delay on the application of any party to the case in which such sentence or order is passed.

Such copy should be made at the expense of the party applying for it, and on his furnishing such stamp paper as may be required by law; but where a Magistrate F. P. is unable to procure a writer to make a copy at the expense of a party, he should cause a copy to be made by the establishment of the Magistrate of the District at the sudder station.—*Bombay H. C. Cir.*, 257.

In order to aid Appellate Courts in determining whether appeals are barred by limitation, every Criminal Court subordinate to the High Court shall cause to be endorsed the following particulars on every copy of a judgment, order, or charge to a jury, furnished under the provisions of s. 276 or 464 (s. 548 or 371) of the Code of Criminal Procedure:—

The date on which the copy was applied for.

The date on which it was ready for delivery.

The date on which it was delivered.

To prevent unauthorized alterations being made, the dates should be written in letters in a distinct handwriting, and each endorsement should be signed by some responsible officer of the Court on the date to which it refers.—*Bombay Gazette*, 1879, pp. 471, 475. See *Cal. C. O. No. 1*, 18th June 1883, *Wilkins*, p. 138.

The following rule is in force in Burma:—

On all copies of judgments and orders granted to applicants, note shall be made by the Clerk of the Court or other responsible officer—

(1) of the date on which application for copy was made, and

(2) of the date on which copy was ready for delivery to the applicant.

—*Burma Gazette*, 1875, Part III, p. 23.

Under the rules in force in Madras, copies of any portion of the record of a criminal trial must be furnished to the parties concerned on payment of the proper stamp and the authorized fee for copying. Where the Judge's notes form the only record of the evidence, copies of those notes should be given. A prisoner sentenced to death is entitled to obtain a copy of the Judge's letter of reference.—*Mad. H. C. Pro.*, 21st March 1860, 5th January 1863, and 11th December 1865, *Weir*, p. 9.

549. The Governor-General in Council may make rules, consistent with this Code and the Army Act, 1881, or any similar law for the time being in force, as to the cases in which persons subject to military law shall be tried

Delivery to Military
authorities of persons
liable to be tried by
Court-Martial.

by a Court to which this Code applies or by Court-Martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable, under the Army Act, 1881, section 41, to be tried by a Court-Martial, such

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Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the Commanding Officer of the regiment, corps or detachment to which he belongs, or to the Commanding Officer of the nearest military station, for the purpose of being tried by Court-Martial.

Every Magistrate shall, on receiving a written application for that purpose by the Commanding Officer of any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

See Beng. Reg. XX of 1825, a Regulation for declaring the jurisdiction of the Military Courts-Martial and Courts of Requests. See s. 5, *ante*.

550. Police-officers superior in rank to an officer in charge of a police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

Act X of 1872, s. 137. As to the powers and duties of an officer in charge of a Police-station, see note to s. 4 (*a*). See also *Empress v. Tucker*, I. L. R., 7 Bom., 42, and section 127, *supra*.

551. Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction of a woman, or of a female child under the age of fourteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

Act IV of 1877, s. 17. The terms of this section are general. It may, however, be questioned whether it could be acted upon where the woman or child has been abducted and taken out of the jurisdiction, and detained out of the jurisdiction of the Court.

552. Whenever any person causes a Police-officer to arrest another person in a Presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter, as the Magistrate thinks fit.

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In such cases, if more persons than one are arrested ~~or complained against~~, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

The first part of this section follows Act IV of 1877, s. 242, omitting the provision as to complaints, which is inserted in s. 250.

The words 'or complained against' in the second paragraph of the section ought to have been omitted.

The provision as to imprisonment in the last paragraph is new.

As to the recovery of fines, see ss. 386—388, *supra*.

553. With the previous sanction of the Governor-General in Council, the High Court at Fort William, and, with the previous sanction of the Local Government, any other High Court established by Royal Charter, may, from time to time, make rules for the inspection of the records of subordinate Courts.

Power of chartered High Courts to make rules for inspection of records of subordinate Courts.

Power of other High Courts to make rules for other purposes.

Every High Court not established by Royal Charter may, from time to time, and with the previous sanction of the Local Government,

(a) make rules for keeping all books, entries, and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts ;

(b) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided ;

(c) make rules for regulating its own practice and proceedings and the practice and proceedings of all Criminal Courts subordinate to it ; and

(d) make rules for regulating the execution of warrants issued under this Code for the levy of fines :

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

All rules made under this section shall be published in the local official Gazette.

Act X of 1872, ss. 292, 293.

For rules as to the expenses of complainants and witnesses coming from the mofussil to attend criminal trials before the High Court on its Original Side, see *Belchambers's Rules and Orders*, p. 348.

The following rule was passed under s. 292 of Act X of 1872 by the Bombay High Court:—

The High Court directs that when death or grievous hurt has been caused by a blow from a stick or other similar weapon, the weight and dimensions of the weapon should be stated in the Sessions proceedings with such particularity as may enable the High Court (which has no opportunity of seeing it) to form an opinion as to the character of the weapon and the intention with which it was probably used. The mere entry of 'a stick' or 'a stone' in the list of property produced before the Sessions Court does not enable the High Court to judge whether the stick or the stone was a deadly weapon or a comparatively harmless weapon.—*Bombay Gazette*, 1881, p. 370.

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554. Subject to the power conferred by section 553, and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fifth schedule with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

Forms.

Act X of 1872, ss. 442 and 493 (para. 1), s. 509 (para. 2), and Act IV of 1877, s. 97.

For the form of warrant issued in Burma to a jailor, in cases where the payment or levy of a fine or portion of a fine has the effect of reducing the imprisonment to which an offender has been sentenced, see *Burma Gazette*, 1878, p. 211.

In a recent case, *Habiboolah v. Empress*, I. L. R., 10 Cal., 937, the prisoner was convicted on an alternative charge in the form provided by Schedule V, XXVIII, II (4), *post*, of having given false evidence, such evidence consisting of contradictory statements contained in *one* deposition while he was under cross-examination and re-examination as a witness in a judicial proceeding. There was no finding as to which of the contradictory statements was false, the conviction being in accordance with the charge. It was held by WILSON and TOTTENHAM, JJ. (NORRIS, J., dissenting), that the conviction was good. The form referred to, it is to be observed, contemplates that the contradictory statements in respect of which the perjury is assigned have been made on different occasions; but the Court, in the case referred to, considered this section sufficiently provided for the modification of the form so as to meet the case before it. See *Empress v. Ghulel*, I. L. R., 7 All., 45, overruling *Niaz Ali*, I. L. R., 5 All., 17.

555. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Explanation.—A Judge or Magistrate shall not be deemed to be a party or personally interested, within the meaning of this section, to or in any case, merely because he is a Municipal Commissioner.

* This section is new.

As to transferring cases, see s. 526, *ante*, p. 378.

Irregularities at trial.—A Magistrate is not disqualified from dealing with a

Ob. XLVI case judicially, merely because in his character of Magistrate it may have been
s. 555 his duty to initiate the proceedings, yet a Magistrate ought not to act judicially in a case where there is no necessity for his doing so, or where he himself discovered the offence and initiated the prosecution, and was one of the principal witnesses for the prosecution (*Reg. v. Bholanath Sen*, I. L. R., 2 Calc., 23; see also *Reg. v. Hiralal Dass*, 8 B. L. R. (F.B.), 422); and a recent case in England.—*Reg. v. Meyer*, L. R., 1 Q. B. D., 173.

In *Wood v. Corporation of Calcutta*, I. L. R., 7 Calc., 322; (S.C.) 9 C. L. R., 193, a conviction was held illegal, on the ground that the Magistrate, in a prosecution by the Corporation of the Town of Calcutta, had, by his connection as a servant of the Corporation, such an interest, pecuniary or personal, as was likely to give him a bias in the matter of the prosecution. So in a very recent case before the Calcutta High Court, it was held, that a conviction of an offence against any Municipal law or regulation had before a Bench of Magistrates which includes a salaried officer of the Municipality is bad.—*In re Nobin Krishna Mookerjee*, I. L. R., 10 Calc., 194. In the case of *Dimes v. Grand Junction Canal*, 3 H. L. Cas., 793, LORD CAMPBELL said:—"It is of the last importance that the maxim, that no man is to be judge in his own cause, should be held sacred. And that is not to be confined to a cause in which he is a party, but is to be applied to a cause in which he has an interest." In that case a bill in equity was filed by an incorporated company, and a decree was made by the LORD CHANCELLOR, but the decree was afterwards set aside, on the ground that the LORD CHANCELLOR was himself a shareholder in the company. See *Reg. v. Bholanath Sen*, I. L. R., 2 Calc., 23; *Reg. v. Mukta Sing*, 4 B. L. R., Ap. Cr., 15; *Reg. v. Hira Lal Dass*, 8 B. L. R., 422; *Reg. v. Milledge*, L. R., 4 Q. B. D., 332; and *Reg. v. Gibbon*, I. L. R., 6 Q. B. D., 168.

In *Serjeant v. Dale*, L. R., 2 Q. B. D., 558, the following remarks were made by the Court (see pages 566 and 567)—"By the Common Law, a Judge who has an interest in the result of a suit is disqualified from acting, except in cases of necessity where no other Judge has jurisdiction. . . . The law does not measure the amount of interest which a Judge possesses. If he has any legal interest in the decision of the question, one way he is disqualified, no matter how small the interest may be. The law in laying down this strict rule has regard not so much, perhaps, to the motives which may be supposed to bias the Judge, as to the susceptibilities of the litigant parties. One important object at all events is to clear away everything which might engender suspicion and distrust of the tribunal, and so to promote the feeling of confidence in the administration of justice which is so essential to social order and security. . . . We are anxious not to be misunderstood in using this language. No right minded person does or can for a moment entertain the thought that the right reverend prelate who was called upon to act in this case was or could be influenced by any consideration of personal interest in the proceeding. . . . The applicant stands upon his legal right and calls upon us to give effect to it."

The mere circumstance that a trying Magistrate is the master of the complainant does not deprive the Magistrate of his jurisdiction, though it is expedient that the complaint in such a case should be referred to another Magistrate.—*In re Basapa*, I. L. R., 9 Bom., 172.

On the 29th March 1883, the Municipal Commissioners of Commillah, at a meeting, issued an order under s. 256 of the Bengal Municipal Act of 1876. For having disobeyed that order, the accused was tried and convicted before the District Magistrate under s. 188 of the Penal Code, and fined. The Magistrate who tried and convicted the accused was present as Chairman of the Municipal Commissioners at the meeting of the 29th March when the order was passed. On revision, the conviction was set aside by the High Court as illegal.—*In re Kharak Chand Pal*, I. L. R., 10 Calc., 1030.

Prosecution.—A Magistrate who has been authorized by the Collector of a District under s. 43 of the Stamp Act to prosecute offenders under the stamp laws is not competent also to try the persons whom he prosecutes.—*Empress v. Gangadhar Bhunjo*, I. L. R., 3 Calc., 622.

Imputation of prejudice.—The accompanying copy of a despatch from the Secretary of State for India to the Government of Madras was circulated for the information and guidance of all Judges and Magistrates:—

Disqualifying interest of Magistrate—Criminal proceedings—Irregularity—"Personally interested"—Criminal Procedure Code, 1882, s. 555. Where a District Magistrate, as prosecutor, initiated and directed the proceedings against certain accused persons who were charged by him with having committed offences punishable under sections 143 and 150 of the Penal Code, and where it appeared that the District Magistrate had himself taken an active part in causing the dispersion of the unlawful assembly, and had pursued and directed the pursuit of the members thereof, and that he subsequently took pains to collect the evidence showing the connection of the accused with the unlawful assembly and the keeping of armed men, on which evidence the accused were afterwards convicted by himself; and where it also appeared from the judgment of the District Magistrate that he had embodied therein matters which, if relevant, showed that he should have been examined as a witness, and that such matters should not have been stated without the accused having had an opportunity of testing them by cross-examination: *Held*, that the District Magistrate was disqualified from trying the case himself, and that the conviction must be set aside and a fresh trial hold before some other Magistrate. The words "personally interested" as used in section 555 of the Code of Criminal Procedure do not merely mean "privately interested" or "interested as a private individual," but include such an interest as the District Magistrate must have had under the above circumstances in the conviction of the accused. *J. A. R. Calcutta*

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JUDGE—Disqualification of a Judge—Personal interest—Criminal Procedure Code (Act X of 1882), Sec. 555—Bombay District Municipal Act (VI of 1873), Sec. 84—Municipal offence. The mere fact that a Magistrate is the vice-president of a district municipality and chairman of the managing committee does not disqualify him from trying a charge of an offence brought by the municipality under Bombay Act VI of 1873. But if he has taken any part in promoting the prosecution, as, for instance, by concurring in sanctioning it at a meeting of the managing committee or otherwise, he will be disqualified by reason of the existence of a personal interest over and above what may be supposed to be felt by every municipal commissioner in the affairs of the municipality. *J. A. R. Bom 442*

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"The memorialist was prosecuted by the Collector, and he alleges that when the Sessions Judge came to try the case, he resided at the Collector's house and was greatly prejudiced by the Collector against the memorialist. I have no doubt that the latter assertion is quite unfounded, but I think it would be well if Your Grace in Council would suggest to the Judges, through the High Court, to avoid, as far as possible, becoming the guests of those who are interested in cases, civil or criminal, which will eventually be submitted to the Judge's decision. All possible imputation of prejudice against the weaker party will thus be avoided."—*Mad. H. C. C. O. No. 7 of 7th April 1877.*

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556. The Local Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government, other than the High Courts established by Royal Charter.

Act X of 1872, s. 337.

With the permission of the Presidency Judge or Magistrate, any advocate or pleader may address the Court in English, when anyone of the pleaders on the opposite side is acquainted with that language, or whenever the senior of such pleaders or his client consents to this being done.—*Calc. H. C. C. O. No. 4 of 15th March 1869, Wilkins, p. 4.*

In Madras, advocates pleading in any lower Court in which the language of the Judge is English, may address the Court in that language, the Judge making arrangement for the interpretation, if necessary, of such address to the pleader on the other side.—*Mad. H. C. Pro., 22nd July 1858, Weir, p. 26.*

Hindi was declared to be the Court language to be used in judicial and revenue proceedings in the Darjeeling District (*Calcutta Gazette*, 1873, p. 1116); Assamese in the five valley districts of Assam, viz., Kamroop, Durrung, Nowgong, Sebsagor, and Luckimpore.—*Calcutta Gazette*, 1873, p. 912.

Canarese has been declared to be the language in ordinary use in the Criminal Courts of the District of Belgaum.—*Bombay Gazette*, 1874, p. 338.

Powers of Governor-General in Council and Local Government exercisable from time to time.

557. All powers conferred by this Code on the Governor-General in Council or on the Local Government may be exercised from time to time as occasion requires.

This is new.

558. The provisions of this Code shall apply, so far as may be, to all cases pending in any Criminal Court when this Code comes into force.

Pending cases.

Compare Act X of 1872, ss. 3 and 539; Act X of 1875, s. 153; Act IV of 1877, ss. 5 and 237.

As to the retroactive force of enactments relating to procedure, see *In re Ratansi Kalianji*, I. L. R., 2 Bom., 148, and *Uda Begum v. Inam-ud-din*, I. L. R., 2 All., 74. See also *Srinivasachari v. Queen*, I. L. R., 6 Mad., 336.

559. A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property." [Act X of 1886, s. 16.]

* Officers concerned in sales not to purchase or bid for property.

Sched. I

SCHEDULE I.

ENACTMENTS REPEALED.

(a.)—*Statute.*

| Year, reign and chapter. | Title. | Extent of repeal. |
|--------------------------|--|-------------------|
| 13 Geo. III, chapter 63 | An Act for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe. | Section 38. |

(b.)—*Acts of the Governor-General in Council.*

| Number and year. | Subject. | Extent of repeal. |
|------------------|---|--|
| XXIII of 1840 | Execution of process | So much as has not been repealed. |
| XLV of 1860 | Penal Code | The illustrations to section 214. |
| V of 1861 | Police Act | Section 6 and the last nine words of section 24. Section 35, down to and including the words 'provided that.' |
| XVIII of 1862 | Criminal Procedure, Supreme Courts | So much as has not been repealed. |
| VI of 1864 | Whipping | Section 7. |
| II of 1869 | Justices of the Peace | So much as has not been repealed. |
| XXII of 1870 | Application to European British subjects of Acts conferring summary jurisdiction. | So much as has not been repealed. |
| IV of 1872 | Punjab Laws | So far as it relates to Bengal Regulation XX of 1825. |
| X of 1872 | The Code of Criminal Procedure | So much as has not been repealed. |
| XI of 1874 | Amending the Code of Criminal Procedure. | The whole. |
| XV of 1874 | Laws Local Extent | So far as it relates to Bengal Regulation XX of 1825. |
| X of 1875 | High Courts' Criminal Procedure | The whole Act, except section 144 and so much of section 146 as relates to informations (1). |

(1) Sections 144 and 146 of Act X of 1875 are as follows:—

144. The Advocate-General may, with the previous sanction of the Governor-General in Council or the Local Government, exhibit to the Local High Court, against persons subject to the jurisdiction of the said Court, informations for all purposes for which Her Majesty's Attorney-General may exhibit informations on behalf of the Crown in the Court of Queen's Bench or Exchequer.

Such proceedings may be taken upon every such information as may lawfully be taken in case of similar informations filed by Her Majesty's Attorney-General in England, so far as the circumstances of the case and the course and practice of proceeding in the said High Courts respectively will admit.

All fines, penalties, forfeitures, debts, and sums of money recovered or levied under or by virtue of any such information shall belong to the Government of India.

146. At any stage of any proceeding under this Act, before the return of the verdict, the Advocate-General may, if he think fit, inform the Court on behalf of Her Majesty that he will no further prosecute the defendant upon the information or charge; and thereupon all proceedings on such information or charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal.

CRIMINAL PROCEDURE CODE, s. 560. *Compensation for frivolous or vexatious complaint*—Such compensation inapplicable to a complaint under s. 110.] The award of compensation under s. 560 of the Code of Criminal Procedure must be in respect of a frivolous and vexatious accusation of an offence of which the accused person has been discharged or acquitted. That section is not applicable to an application made to a Magistrate solely with a view to his taking proceedings under s. 110 of the Code.

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COMPENSATION—Complainant—Complaint—Criminal Procedure Code (Act X of 1882), ss. 4, 250, 560—Act IV of 1891, s. 2—Penal Code (Act XLV of 1860), s. 186.] Where a Civil Court peon was sent by a Munsif to attach certain property, and on the peon reporting that he had been obstructed in making the attachment, the Munsif sent the case to the Deputy Magistrate for investigation and trial, and the Deputy Magistrate summarily tried the accused under section 186 of the Penal Code, dismissed the case, and awarded compensation of Rs. 20 to the accused. *Held*, that the award of compensation to the peon, though nominally the informant in the proceedings, was not a complaint instituted before the Deputy Magistrate.

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COMPENSATION—Criminal Procedure Code (Act X of 1882), section 560—Imprisonment in default of payment of compensation—Distress.] The application of section 560 of the Code of Criminal Procedure is restricted to cases instituted by "complaint" as defined in the Code or on information given to a police officer or a Magistrate, and consequently that section has no application to a case instituted on a police report or on information given by a police officer. *Quære*—Whether under this section a Magistrate has power to make an order for imprisonment in default of payment of the compensation awarded? A police constable arrested a carter and charged him before a Magistrate with an offence under section 84 of Act V of 1861. The Magistrate acquitted the accused and directed, under section 560 of the Code, that the police constable should pay him Rs. 20 as compensation or undergo simple imprisonment for a fortnight. *Held*, that as the section had no application to the case, the order was illegal, being made without jurisdiction. *Held*, further, that even if the Magistrate had power under the Code to pass an order for imprisonment in default of payment of compensation awarded under section 560, it was illegal to pass such an order until some attempt had been made to levy the amount in the manner provided by section 586 for the levying of a fine.

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(b.)—Acts of the Governor-General in Council.—(Contd.)

Sched. I

| Number and year. | Subject. | Extent of repeal. |
|-------------------|----------------------------|---|
| XX of 1875 ... | Central Provinces Laws ... | So far as it relates to Bengal Regulation XX of 1825. |
| XVIII of 1876 ... | Oudh Laws ... | Ditto. |
| IV of 1877 ... | Presidency Magistrates ... | The whole Act except section 57 (1). |
| XXI of 1879 ... | Extradition ... | Chapter III. |
| X of 1881 ... | Coroners ... | Sections 8 and 9. |

(c.)—Regulations.

| Number and year. | Subject. | Extent of repeal. |
|-------------------------------|------------------------------------|---|
| Bengal Regulation XX of 1825. | Jurisdiction of Courts-Martial ... | So much as has not been repealed. |
| III of 1872 ... | Santhal Parganas Settlement ... | So far as it relates to Act X of 1872. |
| IX of 1874 ... | Arakan Hills District Laws ... | So far as it relates to Acts II of 1869, X of 1872, and XI of 1874. |
| III of 1877 ... | Ajmer Laws ... | So far as it relates to Bengal Regulation XX of 1825. |

(d.)—Act of the Governor of Fort St. George in Council.

| Number and year. | Subject. | Extent of repeal. |
|------------------|------------|-------------------|
| VIII of 1867 ... | Police ... | Section 9. |

(1) Section 57 of Act IV of 1877 is as follows:—

A fee of eight annas shall be paid for every summons or warrant issued by a Presidency Magistrate, except in the case of a summons to attend and give evidence or to produce documents, in which case there shall be paid a fee of four annas:

Provided that such Magistrate may in any case remit any such fee, if he is satisfied that the complainant is unable to pay the same, and shall remit it when the complaint is made by a public servant in the execution of his duty.

Sched. II.

SCHEDULE II.

TABULAR STATEMENT OF OFFENCES.

EXPLANATORY NOTE.—The entries in the second and seventh columns of this schedule, headed respectively 'Offence' and 'Punishment under the Indian Penal Code', are not intended as definitions of the offences, and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the statute of which the number of which is given in the first column. The third column of this schedule applies to the police in the towns of Calcutta and Bombay.

CHAPTER V.—ABETMENT.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---------|--|--|---|---|---|---|--|
| Section | Offence | Whether the police may arrest without warrant or not. | Whether a warrant or summons shall ordinarily issue in the first instance | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 109 | Abetment of any offence if the act abetted is committed in consequence, and where no express provision is made for its punishment. | May arrest without warrant if the offence abetted may be made without warrant, but not otherwise | According as a warrant or summons may issue for the offence abetted | According as the offence abetted is bailable or not | According as the offence abetted is compoundable or not | The same punishment as for the offence abetted | The Court by which the offence abetted is triable. |
| 110 | Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 111 | Abetment of any offence, when one act is abetted and a different act is done; subject to the proviso. | Ditto | Ditto | Ditto | Ditto | The same punishment as for the offence intended to be abetted | Ditto. |
| 112 | Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor. | Ditto | Ditto | Ditto | Ditto | The same punishment as for the offence committed. | Ditto |

| | | | | | | | | | |
|-----|--|-------|-----|-------|---|-------|-----|---|--------|
| 114 | Abetment of any offence, if abettor is present, when offence is committed. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... |
| 115 | Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment. If an act which causes harm be done in consequence of the abetment. | Ditto | ... | Ditto | Not bailable | Ditto | ... | Imprisonment of either description for 7 years and fine. | Ditto. |
| 116 | Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment. If the abettor or the person abetted be a public servant whose duty it is to prevent the offence | Ditto | ... | Ditto | Ditto | Ditto | ... | Imprisonment of either description for 14 years and fine. | Ditto. |
| 117 | Abetting the commission of an offence by the public, or by more than ten persons. | Ditto | ... | Ditto | According as the offence abetted is bailable or not | Ditto | ... | Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both. | Ditto. |
| 118 | Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed If the offence be not committed | Ditto | ... | Ditto | Ditto | Ditto | ... | Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both. | Ditto. |
| 119 | A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed If the offence be punishable with death or transportation for life. If the offence be not committed | Ditto | ... | Ditto | Not bailable | Ditto | ... | Imprisonment of either description for 3 years, or fine, or both. | Ditto. |
| | | Ditto | ... | Ditto | According as the offence abetted is bailable or not | Ditto | ... | Imprisonment of either description for 7 years and fine. | Ditto. |
| | | Ditto | ... | Ditto | Ditto | Ditto | ... | Imprisonment of either description for 5 years and fine. | Ditto. |
| | | Ditto | ... | Ditto | Not bailable | Ditto | ... | Imprisonment extending to half of the longest term and of any description, provided for the offence, or fine, or both. | Ditto. |
| | | Ditto | ... | Ditto | According as the offence abetted is bailable or not | Ditto | ... | Imprisonment of either description for 10 years. | Ditto. |
| | | Ditto | ... | Ditto | Ditto | Ditto | ... | Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both. | Ditto. |

Sched. II.

CHAPTER V.—ABETMENT.—(Continued.)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------|---|--|--|--|--|---|--|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 120 | Concealing a design to commit an offence punishable with imprisonment, if the offence be committed. | May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise. | According as a warrant or summons may issue for the offence abetted. | According as the offence abetted is compoundable or not. | According as the offence abetted is compoundable or not. | Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both. | The Court by which the offence abetted is triable. |
| | If the offence be not committed | Ditto | Ditto | Ditto | Ditto | Imprisonment extending to one-eighth part of the longest term, and of the description provided for the offence, or fine, or both. | Ditto. |

CHAPTER VI.—OFFENCES AGAINST THE STATE.

| | Waging or attempting to wage war, or abetting the waging of war, against the Queen. | Shall not arrest without warrant | Warrant | ... | Not bailable. | Not compoundable. | Death, or transportation for life, and forfeiture of property. | Court of Session. |
|-----|---|----------------------------------|---------|-----|---------------|-------------------|--|-------------------|
| 121 | Conspiring to commit certain offences against the State. | Ditto | Ditto | ... | Ditto | Ditto | Transportation for life or any shorter term, or imprisonment of either description for 10 years. | Ditto. |
| 122 | Collecting arms, &c., with the intention of waging war against the Queen. | Ditto | Ditto | ... | Ditto | Ditto | Transportation for life, or imprisonment of either description for 10 years, and forfeiture of property. | Ditto. |
| 123 | Concealing with intent to facilitate a design to wage war. | Ditto | Ditto | ... | Ditto | Ditto | Imprisonment of either description for 10 years and fine. | Ditto. |

| | | | | | | | | | |
|------|--|-------|-----|-------|-----|--------------|-----|--|---|
| 122 | Assaulting Governor General, Governor, &c., with intent to compel or restrain the exercise of any lawful power. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years and fine. | Ditto. |
| 124A | Exciting, or attempting to excite, disaffection. | Ditto | ... | Ditto | ... | Ditto | ... | Transportation for life or for any term and fine, or imprisonment of either description for 8 years and fine, or fine. | Ditto. |
| 125 | Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war. | Ditto | ... | Ditto | ... | Ditto | ... | Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine. | Ditto. |
| 126 | Committing depredation on the territories of any Power in alliance or at peace with the Queen. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years and fine, and forfeiture of certain property. | Ditto. |
| 127 | Receiving property taken by war or depredation mentioned in sections 125 and 126. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto ... | Ditto. |
| 128 | Public servant voluntarily allowing prisoner of State or War in his custody to escape. | Ditto | ... | Ditto | ... | Ditto | ... | Transportation for life, or imprisonment of either description for 10 years, and fine. | Ditto. |
| 129 | Public servant negligently suffering prisoner of State or War in his custody to escape. | Ditto | ... | Ditto | ... | Bailable | ... | Simple imprisonment for 8 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 130 | Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner. | Ditto | ... | Ditto | ... | Not bailable | ... | Transportation for life, or imprisonment of either description for 10 years, and fine. | Court of Session. |

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

| 131 | Abetting mutiny, or attempting to seduce an officer, soldier or sailor from his allegiance or duty. | May arrest without warrant. | Warrant | ... | Not bailable | Not compoundable. | Court of Session. |
|-----|---|-----------------------------|---------|-----|--------------|-------------------|--|
| | | | | | | | Transportation for life, or imprisonment of either description for 10 years, and fine. |

Sched. II.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.—(Continued.)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------|---|---|--|--------------------------|------------------------------|--|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 182 | Abetment of mutiny, if mutiny is committed in consequence thereof. | May arrest without warrant. | Warrant ... | Not bailable | Not compoundable. | Death, or transportation for life, or imprisonment of either description for 10 years, and fine. | Court of Session. |
| 183 | Abetment of an assault by an officer, soldier or sailor on his superior officer, when in the execution of his office. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 184 | Abetment of such assault, if the assault is committed. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 7 years and fine. | Court of Session. |
| 185 | Abetment of the desertion of an officer, soldier or sailor. | Ditto | Ditto | Bailable | Ditto | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 186 | Harbouring such an officer, soldier or sailor who has deserted. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 187 | Deserter concealed on board merchant-vessel, through negligence of master or person in charge thereof. | Shall not arrest without warrant. | Summons | Ditto | Ditto | Fine of 500 rupees | Ditto. |
| 188 | Abetment of act of insubordination by an officer, soldier or sailor, if the offence be committed in consequence. | May arrest without warrant. | Warrant | Ditto | Ditto | Imprisonment of either description for 6 months, or fine, or both. | Ditto. |
| 189 | Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier. | Ditto | Summons | Ditto | Ditto | Imprisonment of either description for 3 months, or fine of 500 rupees, or both. | Any Magistrate. |

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILITY.

| | May arrest without warrant. | Summons | Bailable | Not com- poundable. | Imprisonment of either des- cription for 6 months, or fine, or both. | Any Magistrate. |
|---|---|--|--|---------------------|--|---|
| 143 Being member of an unlawful assembly. | Ditto | ... | ... | ... | Imprisonment of either des- cription for 2 years, or fine, or both. | Ditto. |
| 144 Joining an unlawful assembly armed with any deadly weapon. | Ditto | Warrant | Ditto | ... | ... | Ditto. |
| 145 Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse. | Ditto | Ditto | Ditto | ... | ... | Ditto. |
| 147 Rioting | Ditto | Ditto | Ditto | ... | ... | Ditto. |
| 148 Rioting, armed with a deadly weapon. | Ditto | Summons | Ditto | ... | Imprisonment of either des- cription for 3 years, or fine, or both. | Court of Session, Presidency Ma- gistrate or Ma- gistrate of the first class. |
| 149 If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence. | According as arrest may be made without warrant for the offence or not. | According as a warrant or summons may be issued for the offence. | According as the offence is bailable or not. | Ditto | The same as for the offence ... | The Court by which the offence is triable. |
| 150 Hiring, engaging or employing persons to take part in an unlawful assembly. | May arrest without war- rant. | According to the offence com- mitted by the person hired, engaged or em- ployed. | Ditto | Ditto | The same as for a member of such assembly, and for any offence committed by any member of such assembly. | Ditto. |
| 151 Knowingly joining or continuing in any assembly of five or more persons after it has been com- manded to disperse. | Ditto | Summons | Bailable | ... | Imprisonment of either des- cription for 6 months, or fine, or both. | Any Magistrate. |
| 152 Assaulting or obstructing public servant when suppressing riot, &c. | Ditto | Warrant | Ditto | ... | Imprisonment of either des- cription for 3 years, or fine, or both. | Court of Session, Presidency Ma- gistrate or Ma- gistrate of the first class. |
| 153 Wantonly giving provocation with intent to cause riot, if rioting be committed. | Ditto | Ditto | Ditto | ... | Imprisonment of either des- cription for 1 year, or fine, or both. | Any Magistrate. |

Sched. II.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILITY.—(Continued.)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------|--|---|--|--------------------------|------------------------------|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| | If not committed ... | May arrest without warrant. | Summons | Bailable | Not compoundable. | Imprisonment of either description for 6 months, or fine, or both. | Any Magistrate. |
| 154 | Owner or occupier of land not giving information of riot, &c. | Shall not arrest without warrant. | Ditto | Ditto | Ditto | Fine of 1,000 rupees... | Presidency Magistrate or Magistrate of the first or second class. |
| 155 | Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it. | Ditto | Ditto | Ditto | Ditto | Fine | Ditto. |
| 156 | Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 157 | Harbouring persons hired for an unlawful assembly. | May arrest without warrant. | Ditto | Ditto | Ditto | Imprisonment of either description for six months, or fine, or both. | Ditto. |
| 158 | Being hired to take part in an unlawful assembly or riot. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
| | Or to go armed ... | Ditto | Warrant | Ditto | Ditto | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 160 | Committing affray ... | Shall not arrest without warrant. | Summons | Ditto | Ditto | Imprisonment of either description for 1 month, or fine of 100 rupees, or both. | Any Magistrate. |

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

| | Shall not arrest without warrant. | Summons | Bailable | Not com- poundable. | Imprisonment of either des- cription for 3 years, or fine, or both. | Court of Session, Presidency Ma- gistrate or Ma- gistrate of the first class. |
|-----|--|---------|----------|---------------------|---|---|
| 161 | Being or expecting to be a public servant, and taking a gratifica- tion other than legal remunera- tion in respect of an official act. | ... | ... | ... | ... | Ditto. |
| 162 | Taking a gratification in order to be corrupt or illegal means to influence a public servant. | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 163 | Taking a gratification for the exercise of personal influence with a public servant. | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 164 | Abetment by public servant of the offences defined in the last two preceding clauses with refer- ence to himself. | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 165 | Public servant obtaining any valu- able thing, without considera- tion, from a person concerned in any proceeding or business transacted by such public ser- vant. | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 166 | Public servant disobeying a direc- tion of the law with intent to cause injury to any person. | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 167 | Public servant framing an in- correct document with intent to cause injury. | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 168 | Public servant unlawfully engag- ing in trade. | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 169 | Public servant unlawfully buying or bidding for property. | Ditto | Ditto | Ditto | Ditto | Ditto. |

Sched. II.

Sched. II.

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.—(Continued.)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------|---|---|--|--------------------------|------------------------------|--|------------------------|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 170 | Personating a public servant ... | May arrest without warrant. | Warrant ... | Bailable ... | Not compoundable. | Imprisonment of either description for 2 years. or fine. | Any Magistrate. |
| 171 | Wearing garb or carrying token used by public servant with fraudulent intent. | Ditto ... | Summons ... | Ditto ... | Ditto ... | Imprisonment of either description for 3 months, or fine of 200 rupees, or both. | Ditto. |

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

| | | | | | | | | |
|-----|---|--|----------------|-----------------|--------------|----------------------------|---|---|
| 172 | Absconding to avoid service of summons or other proceeding from a public servant. If summons or notice require attendance in person, &c., in a Court of Justice. | Shall not arrest without warrant. Ditto | Summons ... | Bailable ... | ... Ditto | Not compoundable. Ditto | Simple imprisonment for 1 month, or fine of 500 rupees, or both. Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. | Any Magistrate. Ditto. |
| 173 | Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation. If summons, &c., require attendance in person, &c., in a Court of Justice. | Ditto | Ditto | Ditto | ... | Ditto | Simple imprisonment for 1 month, or fine of 500 rupees, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 174 | Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority. | Ditto | Ditto | Ditto | ... | Ditto | Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. Simple imprisonment for 1 month, or fine of 500 rupees, or both. | Ditto. Any Magistrate. |

| | | | | | | | | | |
|-----|--|-------|-----|-------|-----|-------|-----|--|---|
| 175 | If the order require personal attendance, &c., in a Court of Justice. | Ditto | ... | Ditto | ... | Ditto | ... | Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. | Ditto. |
| | Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document. | Ditto | ... | Ditto | ... | Ditto | ... | Simple imprisonment for 1 month, or fine of 500 rupees, or both. | The Court in which the offence is committed, is subject to the |
| 176 | If the document is required to be produced in or delivered to a Court of Justice. | Ditto | ... | Ditto | ... | Ditto | ... | provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class. | Ditto. |
| | Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information. | Ditto | ... | Ditto | ... | Ditto | ... | Simple imprisonment for 1 month, or fine of 500 rupees, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 177 | If the notice or information required respects the commission of an offence, &c. | Ditto | ... | Ditto | ... | Ditto | ... | Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. | Ditto. |
| | Knowingly furnishing false information to a public servant. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | Ditto. |
| | If the information required respects the commission of an offence, &c. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 178 | Refusing oath when duly required to take oath by a public servant. | Ditto | ... | Ditto | ... | Ditto | ... | Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. | The Court in which the offence is committed, is subject to the |
| 179 | Being legally bound to state truth, and refusing to answer questions. | Ditto | ... | Ditto | ... | Ditto | ... | provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class. | Ditto. |
| 180 | Refusing to sign a statement made to a public servant when legally required to do so. | Ditto | ... | Ditto | ... | Ditto | ... | Simple imprisonment for 3 months, or fine of 500 rupees, or both. | Ditto. |

Sched. II.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—(Continued.)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---------|--|--|---|-------------------------|-----------------------------|--|---|
| Section | Offence. | Whether the police may arrest without warrant or not | Whether a warrant or a summons shall ordinarily issue in the first instance | Whether bailable or not | Whether compoundable or not | Punishment under the Indian Penal Code. | By what Court triable. |
| 181 | Knowingly stating to a public servant on oath as true that which is false. | Shall not arrest without warrant | Warrant | Bailable | Not compoundable | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 182 | Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person. | Ditto | Summons | Ditto | Ditto | Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 183 | Resistance to the taking of property by the lawful authority of a public servant. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 184 | Obstructing sale of property offered for sale by authority of a public servant. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 1 month, or fine of 500 rupees, or both. | Ditto. |
| 185 | Bidding by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 1 month, or fine of 200 rupees, or both. | Ditto. |
| 186 | Obstructing public servant in discharge of his public functions. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 3 months, or fine of 500 rupees or both. | Ditto. |
| 187 | Omission to assist public servant when bound by law to give such assistance. | Ditto | Ditto | Ditto | Ditto | Simple imprisonment for 1 month, or fine of 200 rupees, or both. | Ditto. |

| | | | | | | | | | |
|-----|---|-------|-----|-------|-----|-------|-----|--|--------|
| 188 | Willfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c. Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed. If such disobedience causes danger to human life, health or safety, &c. | Ditto | ... | Ditto | ... | Ditto | ... | Simple imprisonment for 6 months, or fine of 500 rupees, or both. | Ditto. |
| 189 | Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act. | Ditto | ... | Ditto | ... | Ditto | ... | Simple imprisonment for 1 month, or fine of 200 rupees, or both. | Ditto. |
| 190 | Threatening any person to induce him to refrain from making a legal application for protection from injury. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both. | Ditto. |
| | | | | | | | | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| | | | | | | | | Imprisonment of either description for 1 year, or fine, or both. | Ditto. |

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

| | | | | | | | | | | | |
|-----|--|-----------------------------------|-------|-----|---------|-----|--------------|-----|---------------------|---|---|
| 193 | Giving or fabricating false evidence in a judicial proceeding. | Shall not arrest without warrant. | Ditto | ... | Warrant | ... | Bailable | ... | Not com- poundable. | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 194 | Giving or fabricating false evidence in any other case. | Ditto | ... | ... | Ditto | ... | Ditto | ... | Ditto | Imprisonment of either description for 3 years and fine. | Ditto. |
| | Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence. | Ditto | ... | ... | Ditto | ... | Not bailable | ... | Ditto | Transportation for life, or rigorous imprisonment for 10 years, and fine. | Court of Session. |
| | If innocent person be thereby convicted and executed. | Ditto | ... | ... | Ditto | ... | Ditto | ... | Ditto | Death, or as above | Ditto. |

Sched. II.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—(Continued.)

| Section | 2 | 4 | 5 | 6 | 7 | 8 |
|---------|--|--|---|--|--|---|
| | Offence | Whether the police may arrest without warrant or not | Whether a warrant or a summons shall ordinarily issue in the first instance | Whether bailable or not | Punishment under the Indian Penal Code | By what Court triable |
| 195 | Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for seven years or upwards | Shall not arrest without warrant. | Warrant | Not bailable | The same as for the offence. | Court of Session. |
| 196 | Using in a judicial proceeding evidence known to be false or fabricated | Ditto | Ditto | According as the offence of giving such evidence renders bailable or not | The same as for giving or fabricating false evidence. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 197 | Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence | Ditto | Ditto | Bailable | The same as for giving false evidence | Ditto. |
| 198 | Using as a true certificate one known to be false in a material point. | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 199 | False statement made in any declaration which is by law receivable as evidence | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 200 | Using as true any such declaration known to be false. | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 201 | Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence. | Ditto | Ditto | Ditto | Imprisonment of either description for 7 years and fine. | Court of Session. |

| | | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
|-----|--|-------|-----|---------|-----|-------|-----|-------|-----|-------|-----|---|---|
| • | If punishable with transportation for life or imprisonment for ten years. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both. | Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable. |
| | If punishable with less than 10 years' imprisonment. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 6 months, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 202 | Intentional omission to give information of an offence by a person legally bound to inform. | Ditto | ... | Summons | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 203 | Giving false information respecting an offence committed. | Ditto | ... | Warrant | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first class. |
| 204 | Secreting or destroying any document to prevent its production as evidence. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 205 | False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 206 | Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 207 | Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 208 | Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first class. |

Sched. II.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—(Continued.)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------|---|---|--|--------------------------|------------------------------|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 209 | False claim in a Court of Justice | Shall not arrest without warrant. | Warrant | Bailable | Not compoundable. | Imprisonment of either description for 2 years and fine. | Presidency Magistrate or Magistrate of the first class. |
| 210 | Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 211 | False charge of offence made with intent to injure. * "If offence charged be punishable with imprisonment for 7 years. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
| | If offence charged be capital, or punishable with transportation for life, or with imprisonment for a term exceeding 7 years. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 212 | Harbouring an offender, if the offence be capital. | Ditto | Ditto | Ditto | Ditto | Ditto | Court of Session. |
| | If punishable with transportation for life, or with imprisonment for 10 years. | May arrest without warrant. | Ditto | Ditto | Ditto | Imprisonment of either description for 5 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 3 years and fine. | Ditto. |

* This line of entries was inserted by Act X of 1886, s. 17.

| | | | | | | | | | | | |
|-----|---|-----------------------------------|-----|-------|-----|-------|-----|-------|-----|---|--|
| 213 | If punishable with imprisonment for 1 year and not for 10 years. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both. | Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable. Court of Session. |
| | Taking gift, &c., to screen an offender from punishment, if the offence be capital. | Shall not arrest without warrant. | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years and fine. | |
| | If punishable with transportation for life or with imprisonment for 10 years. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If with imprisonment for less than 10 years. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both. | Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable. Court of Session. |
| 214 | Offering gift or restoration of property in consideration of screening offender, if the offence be capital. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years and fine. | |
| | If punishable with transportation for life or with imprisonment for 10 years. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If with imprisonment for less than 10 years. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both. | Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable. |
| 215 | Taking gift to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first class. |

Sched. II

CHAPTER XL.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(Continued)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---------|---|--|---|----------------------------|------------------------------------|---|---|
| Section | Offence. | Whether the police may arrest without warrant or not | Whether a warrant or summons shall ordinarily issue in the first instance | Whether bailable or not | Whether compoundable or not | Punishment under the Indian Penal Code | By what Court triable. |
| 216 | Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital If punishable with transportation for life or with imprisonment for 10 years If with imprisonment for 1 year, and not for 10 years | May arrest without warrant. Ditto Ditto | Warrant Ditto Ditto | Bailable Ditto Ditto | Not compoundable Ditto Ditto | Imprisonment of either description for 7 years and fine. Imprisonment of either description for 3 years, with or without fine Imprisonment for a quarter of the longest term and of the description provided for the offence, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. Ditto. Presidency Magistrate or Magistrate of the first class or Court by which the offence is triable Presidency Magistrate or Magistrate of the first or second class, Court or Session. |
| 217 | Public servant disobeying a direction of law with intent to save person from punishment or property from forfeiture | Shall not arrest without warrant | Summons | Ditto | Ditto | Imprisonment of either description for 2 years, or fine, or both | Presidency Magistrate or Magistrate of the first or second class, Court or Session. |
| 218 | Public servant framing an incorrect record or writing with intent to save person from punishment or property from forfeiture | Ditto | Warrant | Ditto | Ditto | Imprisonment of either description for 3 years, or fine, or both. | Ditto. |
| 219 | Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict or decision which he knows to be contrary to law. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 7 years, or fine, or both. | Ditto. |
| 220 | Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |

| | | | | | | | | | |
|-----|--|-----------------------------|-----|---------|-----|--------------|-----|--|---|
| 221 | Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital. If punishable with transportation for life, or imprisonment for 10 years. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years, with or without fine. | Ditto. |
| | | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years, with or without fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If with imprisonment for less than 10 years. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 2 years, with or without fine. | Presidency Magistrate or Magistrate of the first or second class. |
| 222 | Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice, if under sentence of death. If under sentence of transportation or penal servitude for life, or transportation, imprisonment or penal servitude for 10 years or upwards. If under sentence of imprisonment for less than ten years; or lawfully committed to custody. | Ditto | ... | Ditto | ... | Not bailable | ... | Transportation for life, or imprisonment of either description for 14 years, with or without fine. | Court of Session. |
| | | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years, with or without fine. | Ditto. |
| | | Ditto | ... | Ditto | ... | Bailable | ... | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 223 | Escape from confinement negligently suffered by a public servant. | Ditto | ... | Summons | ... | Ditto | ... | Simple imprisonment for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 224 | Resistance or obstruction by a person to his lawful apprehension. | May arrest without warrant. | ... | Warrant | ... | Ditto | ... | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 225 | Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | Ditto. |

Sched. II.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—(Concluded.)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------|---|---|--|--------------------------|------------------------------|--|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| | If charged with an offence punishable with transportation for life, or imprisonment for 10 years. | May arrest without warrant. | Warrant | Not bailable | Not compoundable. | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If charged with a capital offence | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 7 years and fine. | Court of Session. |
| | If the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards. | Ditto | Ditto | Ditto | Ditto | ... | Ditto. |
| | If under sentence of death | Ditto | Ditto | Ditto | Ditto | Transportation for life, or imprisonment of either description for 10 years, and fine. | Ditto. |
| " 225A | *Omission to apprehend, or sufferance of escape, on part of public servant in cases not otherwise provided for— (a) in case of intentional omission or sufferance. | Shall not arrest without warrant. | Ditto | Bailable | Ditto | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | (b) in case of negligent omission or sufferance. | Ditto | Summons | Ditto | Ditto | Simple imprisonment for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first class. |
| " 225B | *Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for. | May arrest without warrant. | Warrant | Ditto | Ditto | Imprisonment of either description for 6 months, or fine, or both. | Ditto." or second class. |

* Inserted by Act X of 1886, s. 18.

| | | | | | | | | | | |
|-----|---|-----------------------------------|-----|---------|-----|--------------|-------|-----|--|---|
| 226 | Unlawful return from transportation. | Ditto | ... | Ditto | ... | Not bailable | Ditto | ... | Transportation for life, and fine and rigorous imprisonment for 3 years before transportation. | Court of Session. |
| 227 | Violation of condition of remission of punishment. | Shall not arrest without warrant. | ... | Summons | ... | Ditto | Ditto | ... | Punishment of original sentence, or if part of the punishment has been undergone, the residue. | The Court by which the original offence was triable. |
| 228 | Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding. | Ditto | ... | Ditto | ... | Bailable | Ditto | ... | Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. | The Court in which the offence is committed, subject to the provisions of Chapter XXXV. |
| 229 | Personation of a juror or assessor | Ditto | ... | Ditto | ... | Ditto | Ditto | ... | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first class. |

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

| | | | | | | | | | | |
|-----|---|-----------------------------|-----|---------|-----|--------------|---------------------|-----|--|---|
| 231 | Counterfeiting, or performing any part of the process of counterfeiting coin. | May arrest without warrant. | ... | Warrant | ... | Not bailable | Not com- poundable. | ... | Imprisonment of either description for 7 years and fine. | Court of Session. |
| 232 | Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin. | Ditto | ... | Ditto | ... | Ditto | Ditto | ... | Transportation for life, or imprisonment of either description for 10 years, and fine. | Ditto. |
| 233 | Making, buying or selling instrument for the purpose of counterfeiting coin. | Ditto | ... | Ditto | ... | Ditto | Ditto | ... | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 234 | Making, buying or selling instrument for the purpose of counterfeiting the Queen's coin. | Ditto | ... | Ditto | ... | Ditto | Ditto | ... | Imprisonment of either description for 7 years and fine. | Court of Session. |
| 235 | Possession of instrument or material for the purpose of using the same for counterfeiting coin. | Ditto | ... | Ditto | ... | Ditto | Ditto | ... | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |

Sched. II.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.—(Continued.)

| Section. No. | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|-----------------|--|--|--|-----------------------------|------------------------------------|---|---|
| | Offence. | Whether the police may arrest with- out warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| | If Queen's coin | ... | Warrant | Not bail- able. | Not com- poundable. | Imprisonment of either des- cription for 10 years and fine. | Court of Session. |
| 236 | Abetting in British India the counterfeiting out of British India of coin. | May arrest without war- rant. Ditto | Ditto | Ditto | Ditto | The punishment provided for abetting the counterfeiting of such coin within British India. Imprisonment of either des- cription for 3 years and fine. | Ditto. |
| 237 | Import or export of counterfeit coin, knowing the same to be counterfeit. | Ditto | Ditto | Ditto | Ditto | Court of Session, Presidency Ma- gistrate or the first class. | Court of Session, Presidency Ma- gistrate of the first class. |
| 238 | Import or export of counterfeit of the Queen's coin, knowing the same to be counterfeit. | Ditto | Ditto | Ditto | Ditto | Transportation for life, or im- prisonment of either descrip- tion for 10 years, and fine. | Court of Session, Presidency Ma- gistrate or Ma- gistrate of the first class. |
| 239 | Having any counterfeit coin known to be such when it came into possession, and delivering, &c., the same to any person. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either des- cription for 5 years and fine. | Court of Session, Presidency Ma- gistrate or Ma- gistrate of the first class. |
| 240 | The same with respect to the Queen's coin. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either des- cription for 10 years and fine. | Ditto. |
| 241 | Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either des- cription for 2 years, or fine of ten times the value of the coin counterfeited, or both. | Presidency Ma- gistrate or Ma- gistrate of the first or second class. |
| 242 | Possession of counterfeit coin by a person who knew it to be counterfeit when he became pos- sessed thereof. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either des- cription for 3 years and fine. | Court of Session, Presidency Ma- gistrate or Ma- gistrate of the first class. |

| | | | | | | | | | |
|-----|---|-------|-----|-------|-----|-------|-----|---|---|
| 243 | Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years and fine. | Ditto. |
| 244 | Person employed in a mint causing coin to be of a different weight or composition from that fixed by law. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | Court of Session. |
| 245 | Unlawfully taking from a mint any coming instrument. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | Ditto. |
| 246 | Fraudulently diminishing the weight or altering the composition of any coin. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 247 | Fraudulently *diminishing the weight or altering the composition of the Queen's coin. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years and fine. | Ditto. |
| 248 | Altering appearance of any coin with intent that it shall pass as a coin of a different description. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years and fine. | Ditto. |
| 249 | Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years and fine. | Ditto. |
| 250 | Delivery to another of coin possessed with the knowledge that it is altered. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 5 years and fine. | Ditto. |
| 251 | Delivery of Queen's coin possessed with the knowledge that it is altered. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 10 years and fine. | Ditto. |
| 252 | Possession of altered coin by a person who knew it to be altered when he became possessed thereof. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years and fine. | Ditto. |
| 253 | Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 5 years and fine. | Ditto. |
| 254 | Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 2 years, or fine of ten times the value of the coin. | Presidency Magistrate or Magistrate of the first or second class. |

Sched. I

Sched. II.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.—(Concluded.)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------|--|---|--|--------------------------|------------------------------|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall actually be issued in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 255 | Counterfeiting a Government stamp. | May arrest without warrant. | Warrant | Bailable | Not compoundable. | Transportation for life, or imprisonment for either description for 10 years, and fine. | Court of Session. |
| 256 | Having possession of an instrument or material for the purpose of counterfeiting a Government stamp. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 7 years and fine. | Ditto. |
| 257 | Making, buying or selling instrument for the purpose of counterfeiting a Government stamp. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 258 | Sale of counterfeit Government stamp. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 259 | Having possession of a counterfeit Government stamp. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 260 | Using as genuine a Government stamp known to be counterfeit. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 7 years, or fine, or both. | Ditto. |
| 261 | Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 3 years, or fine, or both. | Ditto. |
| 262 | Using a Government stamp known to have been before used. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |

| | | | | | | | | | |
|-----|---|-------|-----|-------|-----|-------|-----|---|---|
| 263 | Eraasure of mark denoting that stamp has been used. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
|-----|---|-------|-----|-------|-----|-------|-----|---|---|

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

| | | Shall not arrest without warrant. | Summons | Bailable | ... | Not comm-poundable. | Imprisonment of either description for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
|-----|--|-----------------------------------|---------|----------|-----|---------------------|--|---|
| 264 | Fraudulent use of false instrument for weighing. | Ditto | ... | Ditto | ... | Ditto | Ditto | Ditto |
| 265 | Fraudulent use of false weight or measure. | Ditto | Ditto | Ditto | ... | Ditto | Ditto | Ditto |
| 266 | Being in possession of false weights or measures for fraudulent use. | Ditto | Ditto | Ditto | ... | Ditto | Ditto | Ditto |
| 267 | Making or selling false weights or measures for fraudulent use. | Ditto | Ditto | Ditto | ... | Ditto | Ditto | Ditto |

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

| | | May arrest without warrant. | Summons | Bailable | ... | Not comm-poundable. | Imprisonment of either description for 6 months, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
|-----|--|-----------------------------------|---------|----------|-----|---------------------|--|---|
| 269 | Negligently doing any act known to be likely to spread infection of any disease dangerous to life. | Ditto | ... | Ditto | ... | Ditto | Ditto | Ditto |
| 270 | Malignantly doing any act known to be likely to spread infection of any disease dangerous to life. | Ditto | Ditto | Ditto | ... | Ditto | Ditto | Ditto |
| 271 | Knowingly disobeying any quarantine rule. | Shall not arrest without warrant. | Ditto | Ditto | ... | Ditto | Ditto | Ditto |
| 272 | Adulterating food or drink intended for sale, so as to make the same noxious. | Ditto | Ditto | Ditto | ... | Ditto | Ditto | Ditto |

Sched. II.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, &c.—(Continued.)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------|---|---|--|--------------------------|------------------------------|--|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 273 | Selling any food or drink as food and drink, knowing the same to be noxious. | Shall not arrest without warrant. | Summons | Bailable | Not compoundable. | Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 274 | Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 275 | Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 276 | Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 277 | Defiling the water of a public spring or reservoir. | May arrest without warrant. | Ditto | Ditto | Ditto | Imprisonment of either description for 3 months, or fine of 500 rupees, or both. | Any Magistrate. |
| 278 | Making atmosphere noxious to health. | Shall not arrest without warrant. | Ditto | Ditto | Ditto | Fine of 500 rupees | Ditto. |
| 279 | Driving or riding on a public way so rashly or negligently as to endanger human life, &c. | May arrest without warrant. | Ditto | Ditto | Ditto | Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both. | Ditto. |
| 280 | Navigating any vessel so rashly or negligently as to endanger human life, &c. | Ditto | Ditto | Ditto | Ditto | Ditto | Presidency Magistrate or Magistrate of the first or second class. |

| | | Ditto | ... | Warrant | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years, or fine, or both. | Court of Session. |
|-----|---|-----------------------------------|-----|---------|-----|-------|-----|-------|-----|--|---|
| 281 | Exhibition of a false light, mark or buoy. | Ditto | ... | Warrant | ... | Ditto | ... | Ditto | ... | ... | ... |
| 282 | Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life. | Ditto | ... | Summons | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 283 | Causing danger, obstruction or injury in any public way or line of navigation. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Fine of 200 rupees | Ditto. |
| 284 | Dealing with any poisonous substance so as to endanger human life, &c. | Shall not arrest without warrant. | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both. | Ditto. |
| 285 | Dealing with fire or any combustible matter so as to endanger human life, &c. | May arrest without warrant. | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | Any Magistrate. |
| 286 | So dealing with any explosive substance. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | Ditto. |
| 287 | So dealing with any machinery ... | Shall not arrest without warrant. | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | Presidency Magistrate or Magistrate of the first or second class. |
| 288 | A person omitting to guard against probable danger to human life by the fall of any building over which he has a right, entitling him to pull it down or repair it. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | Ditto. |
| 289 | A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal. | May arrest without warrant. | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | Any Magistrate. |
| 290 | Committing a public nuisance ... | Shall not arrest without warrant. | ... | Ditto | ... | Ditto | ... | Ditto | ... | Fine of 200 rupees | Ditto. |
| 291 | Continuance of nuisance after injunction to discontinue. | May arrest without warrant. | ... | Ditto | ... | Ditto | ... | Ditto | ... | Simple imprisonment for 6 months, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 292 | Sale, &c., of obscene books, &c. | Ditto | ... | Warrant | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 months, or fine, or both. | Ditto. |

Sched. II.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, &c.—(Concluded.)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------|---|---|--|--------------------------|------------------------------|--|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 293 | Having in possession obscene book, &c., for sale or exhibition. | May arrest without warrant. | Warrant | Bailable | Not compoundable. | Imprisonment of either description for 3 months, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 294 | Obscene songs | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 294A | Keeping a lottery-office | Shall not arrest without warrant. | Summons | Ditto | Ditto | Imprisonment of either description for 6 months, or fine, or both. | Any Magistrate. |
| | Publishing proposals relating to lotteries. | Ditto | Ditto | Ditto | Ditto | Fine of 1,000 rupees | Ditto. |

CHAPTER XV.—OFFENCES RELATING TO RELIGION.

| | | May arrest without warrant. | Summons | Bailable | Not compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
|-----|---|-----------------------------------|---------|----------|-------------------|---|---|
| 295 | Destroying, damaging, or defiling a place of worship, or sacred object with intent to insult the religion of any class of persons. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 1 year, or fine, or both. | Ditto. |
| 296 | Causing a disturbance to an assembly engaged in religious worship. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 297 | Trespassing in place of worship or sepulchre, disturbing funeral with intention to wound the feelings of any person, or offering indignity to a human corpse. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 298 | Uttering any word or making any sound in the hearing, or making any gesture or placing any object in the sight, of any person, with intention to wound his religious feeling. | Shall not arrest without warrant. | Ditto | Ditto | Compoundable | Ditto | Ditto. |

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.
Of Offences affecting Life.

| | Murder ... | May arrest without warrant. | Warrant | Not bailable | Not punishable. | Death, or transportation for life, and fine. | Court of Session. |
|------|---|-----------------------------|---------|--------------|-----------------|--|---|
| 302 | Murder by a person under sentence of transportation for life. | Ditto | Ditto | Ditto | Ditto | Death ... | Ditto. |
| 303 | Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, &c. | Ditto | Ditto | Ditto | Ditto | Transportation for life, or imprisonment for 10 years, and fine. | Ditto. |
| 304 | If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 10 years, or fine, or both. | Ditto. |
| 304A | Causing death by rash or negligent act. | Ditto | Ditto | Bailable | Ditto | Imprisonment of either description for two years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 305 | Abetment of suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated. | Ditto | Ditto | Not bailable | Ditto | Death, or transportation for life, or imprisonment for 10 years, and fine. | Court of Session. |
| 306 | Abetting the commission of suicide. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 10 years and fine. | Ditto. |
| 307 | Attempt to murder | Ditto | Ditto | Ditto | Ditto | Ditto ... | Ditto. |
| | If such act cause hurt to any person. | Ditto | Ditto | Ditto | Ditto | Transportation for life, or as above. | Ditto. |
| 308 | Attempt by life-convict to murder, if hurt is caused. | Ditto | Ditto | Ditto | Ditto | Death, or as above | Ditto. |
| | Attempt to commit culpable homicide. | Ditto | Ditto | Bailable | Ditto | Imprisonment of either description for 3 years, or fine, or both. | Ditto. |
| 309 | If such act cause hurt to any person. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 7 years, or fine, or both. | Ditto. |
| | Attempt to commit suicide | Ditto | Ditto | Ditto | Ditto | Simple imprisonment for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 311 | Being a thug | Ditto | Ditto | Not bailable | Ditto | Transportation for life and fine | Court of Session. |

Sched. II.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—(Continued.)
Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------|--|---|--|--------------------------|------------------------------|--|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 312 | Causing miscarriage ... | Shall not arrest without warrant. | Warrant ... | Bailable ... | Not compoundable. | Imprisonment of either description for 3 years, or fine, or both. | Court of Session. |
| | If the woman be quick with child | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 7 years and fine. | Ditto. |
| 313 | Causing miscarriage without woman's consent. | Ditto ... | Ditto ... | Not bailable | Ditto ... | Transportation for life, or imprisonment of either description for 10 years, and fine. | Ditto. |
| 314 | Death caused by an act done with intent to cause miscarriage. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 10 years and fine. | Ditto. |
| | If act done without woman's consent. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Transportation for life, or as above. | Ditto. |
| 315 | Act done with intent to prevent a child being born alive, or to cause it to die after its birth. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 10 years, or fine, or both. | Ditto. |
| 316 | Causing death of a quick unborn child by an act amounting to culpable homicide. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 10 years and fine. | Ditto. |
| 317 | Exposure of a child under 12 years of age by parent or person having care of it, with intention of wholly abandoning it. | May arrest without warrant. | Ditto ... | Bailable ... | Ditto ... | Imprisonment of either description for 7 years, or fine, or both. | Ditto. |
| 318 | Concealment of birth by secret disposal of dead body. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 2 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |

Of Hurt.

| 323 | Voluntarily causing hurt | ... | Shall not arrest without warrant. | Summons | ... | Bailable | ... | Compoundable | Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both. | Any Magistrate. |
|-----|--|-----|-----------------------------------|---------|-----|--------------|-----|---|--|---|
| 324 | Voluntarily causing hurt by dangerous weapons or means. | ... | May arrest without warrant. | Ditto | ... | Ditto | ... | Compoundable when permission is given by the Court before which a prosecution is pending. | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 325 | Voluntarily causing grievous hurt | ... | Ditto | Ditto | ... | Ditto | ... | Not compoundable. | Imprisonment of either description for 7 years and fine. | Ditto. |
| 326 | Voluntarily causing grievous hurt by dangerous weapons or means. | ... | Ditto | Ditto | ... | Not bailable | ... | Ditto | Transportation for life, or imprisonment of either description for 10 years, and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 327 | Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of an offence. | ... | Ditto | Warrant | ... | Ditto | ... | Ditto | Imprisonment of either description for 10 years and fine. | Court of Session. |
| 328 | Administering stupefying drug with intent to cause hurt, &c. | ... | Ditto | Ditto | ... | Ditto | ... | Ditto | ... | Ditto. |
| 329 | Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of an offence. | ... | Ditto | Ditto | ... | Ditto | ... | Ditto | Transportation for life, or imprisonment of either description for 10 years, and fine. | Ditto. |
| 230 | Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c. | ... | Ditto | Ditto | ... | Bailable | ... | Ditto | Imprisonment of either description for 7 years and fine. | Ditto. |
| 231 | Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c. | ... | Ditto | Ditto | ... | Not bailable | ... | Ditto | Imprisonment of either description for 10 years and fine. | Ditto. |

Sched. II.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—(Continued.)
Of Hurt.—(Concluded.)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------|---|---|--|--------------------------|---|---|--|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 332 | Voluntarily causing hurt to deter public servant from his duty. | May arrest without warrant. | Warrant | Bailable | Not compoundable. | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 333 | Voluntarily causing grievous hurt to deter public servant from his duty. | Ditto | Ditto | Not bailable | Ditto | Imprisonment of either description for 10 years and fine. | Court of Session. |
| 334 | Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation. | Shall not arrest without warrant. | Summons | Bailable | Compoundable. | Imprisonment of either description for 1 month, or fine of 500 rupees, or both. | Any Magistrate. |
| 335 | Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation. | May arrest without warrant. | Ditto | Ditto | Compoundable when permission is given by the Court before which a prosecution is pending. | Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both. | Court of Session, Presidency Magistrate or Magistrate of the 1st or 2nd class. |
| 336 | Doing any act which endangers human life or the personal safety of others. | Ditto | Ditto | Ditto | Not compoundable. | Imprisonment of either description for 3 months, or fine of 250 rupees, or both. | Any Magistrate. |
| 337 | Causing hurt by an act which endangers human life, &c. | Ditto | Ditto | Ditto | Compoundable when permission is given by the Court before which a prosecution is pending. | Imprisonment of either description for 6 months, or fine of 500 rupees, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 338 | Causing grievous hurt by an act which endangers human life, &c. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 2 years, or fine of 1,000 rupees, or both. | Ditto. |

Of Wrongful Restraint and Wrongful Confinement.

| | | Summons | Bailable | Compoundable. | Simple imprisonment for 1 month, or fine of 500 rupees, or both. | Any Magistrate. |
|-----|--|-----------------------------------|----------|-------------------|--|---|
| 341 | Wrongfully restraining any person. | May arrest without warrant. | ... | ... | ... | Any Magistrate. |
| 342 | Wrongfully confining any person. | Ditto | Ditto | Ditto | Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 343 | Wrongfully confining for three or more days. | Ditto | Ditto | Not compoundable. | Imprisonment of either description for 2 years and fine. | Ditto. |
| 344 | Wrongfully confining for ten or more days. | Ditto | Ditto | Ditto | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 345 | Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation. | Shall not arrest without warrant. | Ditto | Ditto | Imprisonment of either description for 2 years, in addition to imprisonment under any other section. | Ditto. |
| 346 | Wrongful confinement in secret ... | May arrest without warrant. | Ditto | Ditto | Ditto | Ditto. |
| 347 | Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c. | Ditto | Ditto | Ditto | Imprisonment of either description for 3 years and fine. | Ditto. |
| 348 | Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c. | Ditto | Ditto | Ditto | Ditto | Court of Session, Presidency Magistrate or Magistrate of the first class. |

Of Criminal Force and Assault.

| | Summons | Bailable | Compoundable. | Imprisonment of either description for 3 months, or fine of 500 rupees, or both. | Any Magistrate. |
|-----|---|-----------------------------------|---------------|--|-----------------|
| 352 | Assault or use of criminal force otherwise than on grave provocation. | Shall not arrest without warrant. | ... | ... | Any Magistrate. |

Sched. II.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—(Continued.)
Of Criminal Force and Assault.—(Concluded.)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---------|--|---|--|--------------------------|------------------------------|--|---|
| Section | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 353 | Assault or use of criminal force to deter a public servant from discharge of his duty. | May arrest without warrant. | Warrant ... | Bailable .. | Not compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 354 | Assault or use of criminal force to a woman with intent to outrage her modesty. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto. |
| 355 | Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation. | Shall not arrest without warrant. | Summons ... | Ditto ... | Compoundable. | Ditto ... | Ditto. |
| 356 | Assault or criminal force in attempt to commit theft of property worn or carried by a person. | May arrest without warrant. | Warrant ... | Not bailable | Not compoundable. | Ditto ... | Any Magistrate. |
| 357 | Assault or use of criminal force in attempt wrongfully to confine a person. | Ditto ... | Ditto ... | Bailable ... | Ditto ... | Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both. | Ditto. |
| 358 | Assault or use of criminal force on grave and sudden provocation. | Shall not arrest without warrant. | Summons ... | Ditto ... | Compoundable | Simple imprisonment for 1 month, or fine of 200 rupees, or both. | Ditto. |

Of Kidnapping, Abduction, Slavery, and Forced Labour.

| Section | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
|---------|----------------|---|--|--------------------------|------------------------------|--|---|
| 363 | Kidnapping ... | May arrest without warrant. | Warrant ... | Not bailable | Not compoundable. | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |

| | | | | | | | | | | | |
|-----|---|-----------------------------------|-----|-------|-----|--------------|-----|-------------------|-----|--|---|
| 364 | Kidnapping or abducting in order to murder. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Transportation for life, or rigorous imprisonment for 10 years, and fine. | Court of Session. |
| 365 | Kidnapping of abducting with intent secretly and wrongfully to confine a person. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years, and fine. | Ditto. |
| 366 | Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 10 years, and fine. | Ditto. |
| 367 | Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | Ditto. |
| 368 | Concealing or keeping in confinement a kidnapped person. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Punishment for kidnapping or abduction. | Ditto. |
| 369 | Kidnapping or abducting a child with intent to take property from the person of such child. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years, and fine. | Ditto. |
| 370 | Buying or disposing of any person as a slave. | Shall not arrest without warrant. | ... | Ditto | ... | Bailable | ... | Ditto | ... | Imprisonment of either description for 7 years, and fine. | Ditto. |
| 371 | Habitual dealing in slaves | May arrest without warrant. | ... | Ditto | ... | Not bailable | ... | Ditto | ... | Transportation for life, or imprisonment of either description for 10 years, and fine. | Ditto. |
| 372 | Selling or letting to hire a minor for purposes of prostitution, &c. | Ditto | ... | Ditto | ... | Ditto | ... | Not compoundable. | ... | Imprisonment of either description for 10 years, and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 373 | Buying or obtaining possession of a minor for the same purposes. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | Ditto. |
| 374 | Unlawful compulsory labour | Ditto | ... | Ditto | ... | Bailable | ... | Compoundable. | ... | Imprisonment of either description for 1 year, or fine, or both. | Any Magistrate. |

Of Rape.

| | | | | | | | | | | | |
|-----|------|-----------------------------|-----|---------|-----|--------------|-----|-------------------|-----|--|-------------------|
| 376 | Rape | May arrest without warrant. | ... | Warrant | ... | Not bailable | ... | Not compoundable. | ... | Transportation for life, or imprisonment of either description for 10 years, and fine. | Court of Session. |
|-----|------|-----------------------------|-----|---------|-----|--------------|-----|-------------------|-----|--|-------------------|

Sched. II.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—(*Concluded.*)
Of Unnatural Offences.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------|--------------------|--|---|--------------------------|-----------------------------|--|------------------------|
| Section. | Offence. | Whether the police may arrest without warrant or not | Whether a warrant or summons shall ordinarily issue in the first instance | Whether bailable or not. | Whether compensable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 377 | Unnatural offences | May arrest without warrant. | Warrant | Not bailable | Not compensable. | Transportation for life, or imprisonment of either description for 10 years, and fine. | Court of Session. |

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.
Of Theft.

| 379 | Theft | May arrest without warrant. | Warrant | Not bailable | Not compensable. | Imprisonment of either description for 3 years, or fine, or both. | Any Magistrate. |
|-----|--|-----------------------------|---------|--------------|------------------|---|--|
| 380 | Theft in a building, tent or vessel. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 7 years, and fine. | Ditto. |
| 381 | Theft by clerk or servant of property in possession of master or employer. | Ditto | Ditto | Ditto | Ditto | Ditto | Court of Session. |
| 382 | Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt or of restraint, in order to the committing of such theft or to retreating after committing it, or to retaining property taken by it. | Ditto | Ditto | Ditto | Ditto | Rigorous imprisonment for 10 years, and fine. | Presidency Magistrate or Magistrate of the first or second class. Court of Session. |

Of Extortion.

| 384 | Extortion | ... | ... | Shall not arrest without warrant. | Warrant | ... | Bailable | ... | Not com- poundable. | Imprisonment of either descrip- tion for 8 years, or fine, or both. | Court of Session, Presidency Ma- gistrate or Ma- gistrate of the first or second class. Ditto. |
|-----|--|-----|-----|-----------------------------------|---------|-----|--------------|-----|------------------------|--|--|
| 385 | Putting or attempting to put in fear of injury, in order to com- mit extortion. | | | Ditto | Ditto | ... | Ditto | ... | Ditto | Imprisonment of either descrip- tion for 2 years, or fine, or both. | Ditto. |
| 386 | Extortion by putting a person in fear of death or grievous hurt. | | | Ditto | Ditto | ... | Not bailable | ... | Ditto | Imprisonment of either descrip- tion for 10 years, and fine. | Court of Session. |
| 387 | Putting or attempting to put a person in fear of death or griev- ous hurt in order to commit extortion. | | | Ditto | Ditto | ... | Ditto | ... | Ditto | Imprisonment of either descrip- tion for 7 years, and fine. | Ditto. |
| 388 | Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years. If the offence threatened be an unnatural offence. | | | Ditto | Ditto | ... | Ditto | ... | Ditto | Imprisonment of either descrip- tion for 10 years, and fine. | Ditto. |
| 389 | Putting a person in fear of accus- ation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion. If the offence be an unnatural offence. | | | Ditto | Ditto | ... | Ditto | ... | Ditto | Transportation for life ... Imprisonment of either descrip- tion for 10 years, and fine. | Ditto. Ditto. |
| | | | | Ditto | Ditto | ... | Ditto | ... | Ditto | Transportation for life | Ditto. |

Of Robbery and Dacoity.

| 392 | Robbery | ... | May arrest without war- rant. | Warrant | ... | Not bailable | Not com- poundable. | Bigorous imprisonment for 10 years, and fine. | Court of Session, Presidency Ma- gistrate or Ma- gistrate of the first class. |
|-----|---------|-----|----------------------------------|---------|-----|--------------|------------------------|--|---|
|-----|---------|-----|----------------------------------|---------|-----|--------------|------------------------|--|---|

Sched. II.

Sched. II.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—(Continued.)
Of Robbery and Dacoity.—(Concluded.)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------|--|---|--|--------------------------|------------------------------|--|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| | If committed on the highway between sunset and sunrise. | May arrest without warrant. | Warrant ... | Not bailable | Not compoundable. | Rigorous imprisonment for 14 years, and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 393 | Attempt to commit robbery | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Rigorous imprisonment for 7 years, and fine. | Ditto. |
| 394 | Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Transportation for life, or rigorous imprisonment for 10 years, and fine. | Ditto. |
| 395 | Dacoity | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto | Court of Session. |
| 396 | Murder in dacoity | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Death, transportation for life, or rigorous imprisonment for 10 years, and fine. | Ditto. |
| 397 | Robbery or dacoity, with attempt to cause death or grievous hurt | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Rigorous imprisonment for not less than 7 years. | Ditto. |
| 398 | Attempt to commit robbery or dacoity when armed with deadly weapon. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto | Ditto. |
| 399 | Making preparation to commit dacoity. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Rigorous imprisonment for 10 years, and fine. | Ditto. |
| 400 | Belonging to a gang of persons associated for the purpose of habitually committing dacoity. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Transportation for life, or rigorous imprisonment for 10 years, and fine. | Ditto. |
| 401 | Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Rigorous imprisonment for 7 years, and fine. | Ditto. |

| | | | | | | | | | |
|-----|--|-------|-------|-------|-------|-------|-------|-------|--------|
| 402 | Being one of five or more persons assembled for the purpose of committing larceny. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
|-----|--|-------|-------|-------|-------|-------|-------|-------|--------|

Of Criminal Misappropriation of Property.

| | | | | | | | | | |
|-----|--|-----------------------------------|---------|-----|----------|-----|---------------------|---|---|
| 403 | Dishonest misappropriation of moveable property, or converting it to one's own use. | Shall not arrest without warrant. | Warrant | ... | Bailable | ... | Not com- poundable. | Imprisonment of either description for 2 years, or fine, or both. | Any Magistrate. |
| 404 | Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it. If by clerk or person employed by deceased. | Ditto | Ditto | ... | Ditto | ... | Ditto | Imprisonment of either description for 3 years, and fine. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| | | Ditto | Ditto | ... | Ditto | ... | Ditto | Imprisonment of either description for 7 years, and fine. | Ditto. |

Of Criminal Breach of Trust.

| | | | | | | | | | |
|-----|--|-----------------------------|---------|-----|--------------|-----|---------------------|---|---|
| 406 | Criminal breach of trust | May arrest without warrant. | Warrant | ... | Not bailable | ... | Not com- poundable. | Imprisonment of either description for 8 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 407 | Criminal breach of trust by a carrier, wharfinger, &c. | Ditto | Ditto | ... | Ditto | ... | Ditto | Imprisonment of either description for 7 years, and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 408 | Criminal breach of trust by a clerk or servant. | Ditto | Ditto | ... | Ditto | ... | Ditto | Ditto | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |

Sched. II.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—(Continued.)

Of Criminal Breach of Trust.—(Concluded.)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------|---|---|--|--------------------------|------------------------------|--|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 409 | Criminal breach of trust by public servant or by banker, merchant or agent, &c. | Shall not arrest without warrant. | Warrant ... | Not bailable | Not compoundable. | Transportation for life, or imprisonment of either description for 10 years, and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |

Of the Receiving of Stolen Property.

| | May arrest without warrant. | Warrant | Not bailable | Not compoundable. | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
|-----|---|---------|--------------|-------------------|---|---|
| 411 | Dishonestly receiving stolen property, knowing it to be stolen. | ... | ... | ... | Imprisonment for life, or rigorous imprisonment for 10 years, and fine. | Court of Session. |
| 412 | Dishonestly receiving stolen property, knowing that it was obtained by dacoity. | Ditto | Ditto | Ditto | Transportation for life, or imprisonment for 10 years, and fine. | Ditto. |
| 413 | Habitually dealing in stolen property. | Ditto | Ditto | Ditto | Imprisonment of either description for 10 years, and fine. | Ditto. |
| 414 | Assisting in concealment or disposal of stolen property, knowing it to be stolen. | Ditto | Ditto | Ditto | Imprisonment for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |

Of Cheating.

| Cheating | ... | ... | Shall not arrest without warrant. | Warrant | ... | Bailable | ... | Not com- poundable. | Imprisonment of either description for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
|----------|--|-----|-----------------------------------|---------|-----|----------|-----|---------------------|---|---|
| 417 | Cheating | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| 418 | Cheating a person whose interest the offender was bound, either by law, or by legal contract, to protect. | ... | Ditto | Ditto | ... | Ditto | ... | Ditto | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 419 | Cheating by personation | ... | Ditto | Ditto | ... | Ditto | ... | Ditto | Ditto | Ditto. |
| 420 | Cheating and thereby dishonestly inducing delivery of property, or the making, alteration or destruction of a valuable security. | ... | Ditto | Ditto | ... | Ditto | ... | Ditto | Imprisonment of either description for 7 years, and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |

Of Fraudulent Deeds and Dispositions of Property.

| Fraudulent removal or concealment of property, &c., to prevent distribution among creditors. | ... | ... | Shall not arrest without warrant. | Warrant | ... | Bailable | ... | Not com- poundable. | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
|--|--|-----|-----------------------------------|---------|-----|----------|-----|---------------------|---|---|
| 421 | Fraudulent removal or concealment of property, &c., to prevent distribution among creditors. | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| 422 | Fraudulently preventing from being made available for his creditors a debt or demand due to the offender. | ... | Ditto | Ditto | ... | Ditto | ... | Ditto | Ditto | Ditto. |
| 423 | Fraudulent execution of deed of transfer, containing a false statement of consideration. | ... | Ditto | Ditto | ... | Ditto | ... | Ditto | Ditto | Ditto. |
| 424 | Fraudulent removal or concealment of property of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled. | ... | Ditto | Ditto | ... | Ditto | ... | Ditto | Ditto | Ditto. |

Sched. II.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—(Continued.)

Of Mischief.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------|--|---|--|--------------------------|--|--|--|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 426 | Mischief ... | ... | Summons ... | Bailable ... | Compoundable, when the only loss or damage caused is loss or damage to a private person. Ditto ... | Imprisonment of either description for 3 months, or fine, or both. | Any Magistrate. |
| 427 | Mischief, and thereby causing damage to the amount of 50 rupees or upwards. | Ditto | Warrant ... | Ditto ... | Ditto ... | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. Ditto. |
| 428 | Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards. | * May arrest without warrant. | Ditto | Ditto | Not compoundable. | Ditto ... | Ditto. |
| 429 | Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 5 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. Ditto. |
| 430 | Mischief by causing diminution of supply of water for agricultural purposes, &c. | Ditto | Ditto | Ditto | Ditto | Ditto ... | Ditto. |

* See Act XI of 1874, section 4.

| | | | | | | | | | | | | | |
|------------------------------|--|-----------------------------------|-----------------------------|-------|---------|-------|----------|--------------|---------------|-------|--|--|--------|
| 431 | Mischief by injury to public road, bridge, navigable river or navigable channel, and rendering it impassable or less safe for travelling or conveying property. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... |
| 432 | Mischief by causing inundation or obstruction to public drainage, attended with damage. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... |
| 433 | Mischief by destroying or moving or rendering less useful a light-house or seamark, or by exhibiting false lights. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Court of Session. | ... |
| 434 | Mischief by destroying or moving, &c., a landmark fixed by public authority. | Shall not arrest without warrant. | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years, or fine, or both. | ... |
| 435 | Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards. | May arrest without warrant. | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 1 year, or fine, or both. | ... |
| 436 | Mischief by fire or explosive substance with intent to destroy a house, &c. | Ditto | ... | Ditto | ... | Ditto | ... | Not bailable | ... | Ditto | ... | Imprisonment of either description for 7 years, and fine. | ... |
| 437 | Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Transportation for life, or imprisonment of either description for 10 years, and fine. | Ditto. |
| 438 | The mischief described in the last section when committed by fire or any explosive substance. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 10 years, and fine. | Ditto. |
| 439 | Running vessel ashore with intent to commit theft, &c. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 10 years, and fine. | Ditto. |
| 440 | Mischief committed after preparation made for causing death or hurt, &c. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 5 years, and fine. | Ditto. |
| <i>Of Criminal Trespass.</i> | | | | | | | | | | | | | |
| 447 | Criminal trespass | ... | May arrest without warrant. | ... | Summons | ... | Bailable | ... | Compoundable. | ... | Imprisonment of either description for 3 months, or fine of 500 rupees, or both. | Any Magistrate. | ... |

Sched. II.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—(Continued.)

Of Criminal Trespass.—(Continued.)

| | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------|---|---|---|--------------------------|------------------------------|--|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 448 | House-trespass | May arrest without warrant. | Warrant | Bailable | Compoundable. | Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both. | Any Magistrate. |
| 449 | House-trespass in order to the commission of an offence punishable with death. | Ditto | Ditto | Not bailable | Not compoundable. | Transportation for life, or rigorous imprisonment for 10 years, and fine. | Court of Session. |
| 450 | House-trespass in order to the commission of an offence punishable with transportation for life. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 10 years, and fine. | Ditto. |
| 451 | House-trespass in order to the commission of an offence punishable with imprisonment. If the offence is theft | Ditto | Ditto | Bailable | Ditto | Imprisonment of either description for 2 years, and fine. | Any Magistrate. |
| | | Ditto | Ditto | Not bailable. | Ditto | Imprisonment of either description for 7 years, and fine. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 452 | House-trespass, having made preparation for causing hurt, assault, &c. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 453 | Lurking house-trespass or house-breaking. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 2 years, and fine. | Presidency Magistrate or Magistrate of the first or second class. |

| | | | | | | | | | | | |
|-----|---|-------|-----|-------|-----|-------|-----|-------|-----|--|---|
| 454 | Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment. If the offence is theft | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years, and fine. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 455 | Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 10 years, and fine. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 456 | Lurking house-trespass or house-breaking by night. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 457 | Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment. If the offence is theft | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years, and fine. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 458 | Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, &c. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 5 years, and fine. | Ditto. |
| 459 | Grievous hurt caused whilst committing lurking house-trespass or house-breaking. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 14 years, and fine. | Ditto. |
| 460 | Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | | | ... | Ditto | ... | Ditto | ... | Ditto | ... | Transportation for life, or imprisonment of either description for 10 years, and fine. | Court of Session. |
| | | | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | Ditto. |

Sched. II.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—(Concluded.)

Criminal Trespass.—(Concluded.)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---------|---|---|--|--------------------------|------------------------------|---|---|
| Section | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 461 | Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property. | May arrest without warrant. | Warrant | Bailable | Not compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 462 | Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.

| | Forgery ... | ... | ... | Shall not arrest without warrant. | Warrant | Bailable | Not compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Court of Session. |
|-----|--|-----|-----|-----------------------------------|---------|--------------|-------------------|--|-------------------|
| 465 | Forgery ... | ... | ... | Ditto | Ditto | Bailable | Ditto | Imprisonment of either description for 7 years, and fine. | Ditto. |
| 466 | Forgery of a record of a Court of Justice or of a registrar of births, &c., kept by a public servant. | ... | ... | ... | Ditto | Not bailable | ... | ... | ... |
| 467 | Forgery of a valuable security, will, or authority to make or transfer any valuable security, or to receive any money. &c. | ... | ... | Ditto | Ditto | Ditto | Ditto | Transportation for life, or imprisonment of either description for 10 years, and fine. | Ditto. |

| | | | | | | | | | | |
|-----|--|-----------------------------------|-------|-----|--------------|-----|-------|-----|---|--------|
| | When the valuable security is a promissory note of the Government of India. | May arrest without warrant. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... |
| 468 | Forgery for the purpose of cheating. | Shall not arrest without warrant. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years, and fine. | Ditto. |
| 469 | Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose. | Ditto | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years, and fine. | Ditto. |
| 471 | Using as genuine a forged document which is known to be forged. | Ditto | Ditto | ... | Ditto | ... | Ditto | ... | Punishment for forgery | Ditto. |
| | When the forged document is a promissory note of the Government of India. | May arrest without warrant. | Ditto | ... | Not bailable | ... | Ditto | ... | Ditto | Ditto. |
| 472 | Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeited. | Shall not arrest without warrant. | Ditto | ... | Ditto | ... | Ditto | ... | Transportation for life, or imprisonment of either description for 7 years, and fine. | Ditto. |
| 473 | Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeited. | Ditto | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years, and fine. | Ditto. |
| 474 | Having possession of a document, knowing it to be forged, with intent to use it as genuine; if the document is one of the descriptions mentioned in section 466 of the Indian Penal Code. | Ditto | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years, and fine. | Ditto. |
| | If the document is one of the descriptions mentioned in section 467 of the Indian Penal Code. | Ditto | Ditto | ... | Ditto | ... | Ditto | ... | Transportation for life, or imprisonment of either description for 7 years, and fine. | Ditto. |

Sched. II.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.—(Concluded.)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------|--|---|---|--------------------------|-----------------------------|---|------------------------|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall exclusively issue in the first instance. | Whether bailable or not. | Whether committable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 475 | Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material. | Shall not arrest without warrant. | Warrant | Not bailable | Not committable. | Transportation for life or imprisonment of either description for 7 years, and fine. | Court of Session. |
| 476 | Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 7 years, and fine. | Ditto. |
| 477 | Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c. | Ditto | Ditto | Ditto | Ditto | Transportation for life, or imprisonment of either description for 7 years, and fine. | Ditto. |

Of Trade and Property Marks.

| | | Shall not arrest without warrant. | Warrant | Bailable | Not committable. | Imprisonment of either description for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
|-----|---|-----------------------------------|---------|----------|------------------|---|---|
| 482 | Using a false trade or property mark with intent to deceive or injure any person. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 483 | Counterfeiting a trade or property mark used by another, with intent to cause damage or injury. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |

| | | | | | | | | | | | |
|-----|--|-------|-----|---------|-----|-------|-----|-------|-----|---|---|
| 484 | Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property. | Ditto | ... | Summons | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years, and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 485 | Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years, or fine, or both. | Ditto. |
| 486 | Knowingly selling goods marked with a counterfeit property or trade mark. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 487 | Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 488 | Making use of any such false mark. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | Ditto. |
| 489 | Removing, destroying or defacing any property-mark with intent to cause injury. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |

CHAPTER XIX.—CRIMINAL BREACH OF CONTRACTS OF SERVICE.

| | | | | | | | | | | | |
|-----|---|-----------------------------------|-----|---------|-----|----------|-----|---------------|-----|--|---|
| 490 | Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so. | Shall not arrest without warrant. | ... | Summons | ... | Bailable | ... | Compoundable. | ... | Imprisonment of either description for 1 month, or fine of 100 rupees, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 491 | Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 months, or fine of 200 rupees, or both. | Ditto. |

Sched. II.

Sched. II.

CHAPTER XIX.—CRIMINAL BREACH OF CONTRACTS OF SERVICE.—(Concluded.)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------|--|---|--|--------------------------|------------------------------|--|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 492 | Being bound by a contract to render personal service for a certain period at a distant place to which the employe is conveyed at the expense of the employer, and voluntarily deserting the service or refusing to perform the duty. | Shall not arrest without warrant. | Summons ... | Bailable ... | Compoundable. | Imprisonment of either description for 1 month, or fine of double the expense incurred, or both. | Presidency Magistrate or Magistrate of the first or second class. |

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.

| | | Shall not arrest without warrant. | Warrant ... | Not bailable | Not compoundable. | Imprisonment of either description for 10 years, and fine. | Court of Session. |
|-----|--|-----------------------------------|-------------|--------------|-------------------|--|-------------------|
| 493 | A man by deceit causing a woman not lawfully married to him, to believe that she is lawfully married to him, and to cohabit with him in that belief. | ... | ... | ... | ... | ... | ... |
| 494 | Marrying again during the lifetime of a husband or wife. | Ditto | Ditto | Bailable ... | Ditto | Imprisonment of either description for 7 years, and fine. | Ditto. |
| 495 | Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted. | Ditto | Ditto | Not bailable | Ditto | Imprisonment of either description for 10 years, and fine. | Ditto. |
| 496 | A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 7 years, and fine. | Ditto. |

| | | | | | | | | | | | | |
|-----|--|-----|-------|-----|-------|-----|----------|-----|--------------------|-----|---|---|
| 497 | Adultery | ... | Ditto | ... | Ditto | ... | Bailable | ... | Compound- able. | ... | Imprisonment of either descrip- tion for 5 years, or fine, or both. | Presidency Ma- gistrate or Ma- gistrate of the first class. |
| 498 | Enticing or taking away or de- taining with a criminal intent a married woman. | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either descrip- tion for 2 years, or fine, or both. | Presidency Ma- gistrate or Ma- gistrate of the first or second class. |

CHAPTER XXI.—DEFAMATION.

| | | | | | | | | | | | | |
|-----|---|-----|---|-----|---------|-----|----------|-----|--------------------|-----|---|---|
| 500 | Defamation | ... | Shall not arrest without war- rant. | ... | Warrant | ... | Bailable | ... | Compound- able. | ... | Simple imprisonment for 2 years, or fine, or both. | Court of Session. Presidency Ma- gistrate or Ma- gistrate of the first class. |
| 501 | Printing or engraving matter knowing it to be defamatory. | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | Ditto. |
| 502 | Sale of printed or engraved sub- stance containing defamatory matter, knowing it to contain such matter. | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | Ditto. |

CHAPTER XXII.—CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

| | | | | | | | | | | | | |
|-----|--|-----|---|-----|---------|-----|--------------------|-----|------------------------|-----|---|--|
| 504 | Insult intended to provoke a breach of the peace. | ... | Shall not arrest without war- rant. | ... | Warrant | ... | Bailable | ... | Compound- able. | ... | Imprisonment of either descrip- tion for 2 years, or fine, or both. | Any Magistrate. |
| 505 | False statement, rumour, &c., circulated with intent to cause mutiny or offence against the public peace. | ... | Ditto | ... | Ditto | ... | Not bail- able. | ... | Not com- poundable. | ... | Ditto | Presidency Magis- trate or Magis- trate of the first or second class. |
| 506 | Criminal intimidation | ... | Ditto | ... | Ditto | ... | Bailable | ... | Compound- able. | ... | Ditto | Ditto. |

OF CRIMINAL INTIMIDATION.

CHAPTER XXII.—CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.—(Concluded.)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------|---|---|---|--------------------------|------------------------------|--|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| | If threat be to cause death or grievous hurt, &c. | Shall not arrest without warrant. | Warrant ... | Bailable ... | Not compoundable. | Imprisonment of either description for 7 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 507 | Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 2 years, in addition to the punishment under above section. | Ditto. |
| 508 | Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 509 | Uttering any word or making any gesture intended to insult the modesty of a woman, &c. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Simple imprisonment for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first class. |
| 510 | Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Simple imprisonment for 24 hours, or fine of 10 rupees, or both. | Any Magistrate. |

| CHAPTER XXIII.—ATTEMPTS TO COMMIT OFFENCES. | | | | | | | The Court by which the offence attempted is triable. |
|---|--|---|--|---|--|--|--|
| 511 | Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence. | According as the offence is one in respect of which the police may arrest without warrant or not. | According as the offence is one in respect of which a summons or warrant shall ordinarily issue. | According as the offence contemplated by the offender is bailable or not. | Compoundable when the offence attempted is compoundable. | Transportation or imprisonment not exceeding half of the longest term, and of any description, provided for the offence, or fine, or both. | |

OFFENCES AGAINST OTHER LAWS.

| If punishable with death, transportation or imprisonment for seven years or upwards. If punishable with imprisonment for three years and upwards, but less than seven. | May arrest without warrant. Ditto | Warrant Ditto | Not bailable Ditto | Not compoundable. Ditto | |
|---|--|------------------|--|----------------------------|----------------|
| | | | | | |
| If punishable with imprisonment for less than three years. If punishable with fine only | Shall not arrest without warrant. Ditto | Summons Ditto | Except in cases under the Indian Arms Act, 1878, section 19, which shall be bailable.* Bailable | Ditto | |
| | | | Ditto | Ditto | |

According to the provisions of section 29 of this Code.

* See *Empress v. Tegha Singh*, I. L. R., 3 Cal., 473.

SCHEDULE III.

ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

I.—Ordinary Powers of a Magistrate of the Third Class.

- (1) Power to arrest, or direct the arrest in his presence of, an offender, section 65.
- (2) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant, sections 83, 84 and 86.
- (3) Power to issue proclamations in cases judicially before him, section 87.
- (4) Power to attach and sell property in cases judicially before him, section 88.
- (5) Power to restore attached property, section 89.
- (6) Power to issue search-warrant, section 96.
- (7) Power to endorse a search-warrant and order delivery of thing found, section 99.
- (8) Power to record statements or confessions during a police investigation, section 164.
- (9) Power to authorize detention of a person during a police investigation, section 167.
- (10) Power to detain an offender found in Court, section 351.
- (11) Power to sell perishable property of a suspected character, section 525.

II.—Ordinary Powers of a Magistrate of the Second Class.

- (1) The ordinary powers of a Magistrate of the third class.
- (2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, section 155.

III.—Ordinary Powers of a Magistrate of the First Class.

- (1) The ordinary powers of a Magistrate of the second class.
- (2) Power to issue search-warrant otherwise than in course of an inquiry, section 98.
- (3) Power to issue search-warrant for discovery of persons wrongfully confined, section 100.
- (4) Power to require security to keep the peace, section 107.
- (5) Power to require security for good behaviour, section 109.
- (6) Power to make orders, &c., in possession cases, sections 145, 146 and 147.
- (7) Power to commit for trial, section 206.*
- (8) Power to stop proceedings when no complainant, section 249.
- (9) Power to make orders of maintenance, sections 488 and 489.

IV.—Ordinary Powers of a Sub-divisional Magistrate.

- (1) The ordinary powers of a Magistrate of the first class.
- (2) Power to direct warrants to landholders, section 78.
- (3) Power to make orders as to local nuisances, section 133.
- (4) Power to make orders prohibiting repetitions of nuisances, section 143.
- (5) Power to make orders under section 144.
- (6) Power to hold inquests, section 174.
- (7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.
- (8) Power to entertain complaints, section 191.
- (9) Power to receive police reports, section 191.
- (10) Power to entertain cases without complaint, section 191.
- (11) Power to transfer cases to a Subordinate Magistrate, section 192.
- (12) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, section 349.
- (13) Power to sell property alleged or suspected to have been stolen, &c., section 524.
- (14) Power to withdraw cases other than appeals, and to try or refer them for trial, section 528.

* As to the powers of a Magistrate empowered with ordinary powers of a Magistrate of second class, and also the powers to commit for trial under s. 206—See *Ramsundar v. Nirodam*, I. L. R., 6 All., 477.

V.—Ordinary powers of a District Magistrate.

Sched IV.

- (1) The ordinary powers of a Sub-divisional Magistrate, being a Magistrate of the first class.
- (2) Power to issue search-warrants for documents in custody of Postal or Telegraph authorities, section 96.
- (3) Power to discharge persons bound to keep the peace or to be of good behaviour, section 124.
- (4) Power to cancel bond for keeping the peace, section 125.
- (5) Power to try summarily, section 260.
- (6) Power to quash convictions in certain cases, section 350.
- (7) Power to hear appeals from orders requiring security for good behaviour, section 406.
- (8) Power to hear or refer appeals from convictions by Magistrates of the second and third classes, section 407.
- (9) Power to call for records, section 435.
- (10) Power to revise orders passed under section 514, section 515.

SCHEDULE IV.

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED.

| POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED | BY THE LOCAL GOVERNMENT | <ol style="list-style-type: none"> (1) Power to require security for good behaviour, section 110 : (2) Power to make orders as to local nuisances, section 133 : (3) Power to make orders prohibiting repetitions of nuisances, section 143 : (4) Power to make orders under section 144 : (5) Power to hold inquests, section 174 : (6) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186 : (7) Power to take cognizance of offences upon complaint, section 191 : (8) Power to take cognizance of offences upon police reports, section 191 : (9) Power to take cognizance of offences upon information, section 191 : (10) Power to try summarily, section 260 : (11) Power to hear appeals from convictions by Magistrates of the second and third classes, section 407 : (12) Power to sell property alleged or suspected to have been stolen, &c., section 524. |
|---|-------------------------|--|
|---|-------------------------|--|

Sched. IV.

POWERS WITH
WHICH A MAGIS-
TRATE OF THE
FIRST CLASS
MAY BE IN-
VESTED

By THE DISTRICT
MAGISTRATE

- (1) Power to make orders prohi-
biting repetitions of nui-
sances, section 143 :
- (2) Power to make orders under
section 144 :
- (3) Power to hold inquests, sec-
tion 174 :
- (4) Power to take cognizance of
offences upon complaint,
section 191 :
- (5) Power to take cognizance of
offences upon police re-
ports, section 191 :
- (6) Power to transfer cases, sec-
tion 192.

By THE LOCAL GO-
VERNMENT

- (1) Power to pass sentences of
whipping, section 32 :
- (2) Power to make orders prohi-
biting repetitions of nui-
sances, section 143 :
- (3) Power to make orders under
section 144 : [tion 174 :
- (4) Power to hold inquests, sec-
tion 174 :
- (5) Power to take cognizance of
offences upon complaint,
section 191 :
- (6) Power to take cognizance of
offences upon police re-
ports, section 191 :
- (7) Power to take cognizance of
offences upon information,
section 191 : [section 206.
- (8) Power to commit for trial,

POWERS WITH
WHICH A MA-
GISTRATE OF
THE SECOND
CLASS MAY BE
INVESTED

By THE DISTRICT
MAGISTRATE

- (1) Power to make orders prohi-
biting repetitions of nui-
sances, section 143 :
- (2) Power to make orders under
section 144 : [tion 174 :
- (3) Power to hold inquests, sec-
tion 174 :
- (4) Power to take cognizance of
offences upon complaint,
section 191 :
- (5) Power to take cognizance of
offences upon police re-
ports, section 191.

By THE LOCAL GO-
VERNMENT

POWERS WITH
WHICH A MA-
GISTRATE OF
THE THIRD
CLASS MAY BE
INVESTED.

- (1) Power to make orders prohi-
biting repetitions of nui-
sances, section 143 :
- (2) Power to make orders under
section 144 : [tion 174 :
- (3) Power to hold inquests, sec-
tion 174 :
- (4) Power to take cognizance of
offences upon complaint,
section 191 :
- (5) Power to take cognizance of
offences upon police reports,
section 191 :
- (6) Power to commit for trial,
section 206.

| | | |
|--|----------------------------|--|
| POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED. | BY THE DISTRICT MAGISTRATE | (1) Power to make orders prohibiting repetitions of nuisances, section 143; (2) Power to make orders under section 144: [tion 174: (3) Power to hold inquests, section 144: (4) Power to take cognizance of offences upon complaint, section 191: (5) Power to take cognizance of offences upon police reports, section 191. |
| POWERS WITH WHICH A SUB-DIVISIONAL MAGISTRATE MAY BE INVESTED | BY THE LOCAL GOVERNMENT | Power to call for records, section 435. |

SCHEDULE V.

FORMS.

I.—SUMMONS TO AN ACCUSED PERSON.

(See section 68.)

To _____ of _____
 WHEREAS your attendance is necessary to answer to a charge of (*state shortly the offence charged*), you are hereby required to appear in person (*or by pleader, as the case may be*), before the (*Magistrate*) of _____,
 on the _____ day of _____.

Herein fail not.

Dated this _____ day of _____ 18 .

(Seal.)

(Signature.)

II.—WARRANT OF ARREST.

(See section 75.)

To (*name and designation of the person or persons who is or are to execute the warrant*).

WHEREAS _____ of _____ stands charged with the offence, of (*state the offence*), you are hereby directed to arrest the said _____ and to produce him before me. Herein fail not.

Dated this _____ day of _____ 18 .

(Seal.)

(Signature.)

(See section 76.)

This warrant may be endorsed as follows:—

If the said _____ shall give bail himself in the sum of _____, with one surety in the sum of _____ (*or two sureties each in the sum of _____*), to attend before me on the _____ day of _____ and to continue so to attend until otherwise directed by me, he may be released.

Dated this _____ day of _____ 18 .

(Signature.)

Sched. V.

III.—BOND AND BAIL-BOND AFTER ARREST UNDER A WARRANT.

(See section 86.)

I, (name), of _____, being brought before the District Magistrate of _____ (or, as the case may be) under a warrant issued to compel my appearance to answer to the charge of _____, do hereby bind myself to attend in the Court of _____ on the _____ day of _____ next to answer to the said charge, and to continue so to attend until otherwise directed by the Court; and in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees _____.

Dated this _____ day of _____ 18 _____.

(Signature.)

I do hereby declare myself surety for the abovenamed _____ of _____, that he shall attend before _____ in the Court of _____ on the _____ day of _____ next to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court; and, in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees _____.

Dated this _____ day of _____ 18 _____.

(Signature.)

IV.—PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON
ACCUSED.

(See section 87.)

WHEREAS complaint has been made before me that (name, description and address) has committed (or is suspected to have committed) the offence of _____ punishable under section _____ of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (name) cannot be found; and whereas it has been shown to my satisfaction that the said (name) has absconded (or is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said _____ of _____ is required to appear at (place) before this Court (or before me) to answer the said complaint within _____ days from this date.

Dated this _____ day of _____ 18 _____.

(Seal.)

(Signature.)

V.—PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS.

(See section 87.)

WHEREAS complaint has been made before me that (name, description and address) has committed (or is suspected to have committed) the offence of (mention the offence concisely), and a warrant has been issued to compel the attendance of (name, description and address of the witness) before this Court to be examined touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said (name of witness) cannot be served, and it has been shown to my satisfaction that he has absconded (or is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said (name) is required to appear at (place) before the Court of _____ on the _____ day of _____ next at _____ o'clock, to be examined touching _____, the offence complained of.

Dated this _____ day of _____ 18 _____.

(Seal.)

(Signature.)

VI.—ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE OF A
WITNESS.

Sched. V.

(See section 88.)

To the Police-officer in charge of the Police-station at

WHEREAS a warrant has been duly issued to compel the attendance of (*name, description and address*) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served; and whereas it has been shown to my satisfaction that he has absconded (*or is concealing himself to avoid the service of the said warrant*); and thereupon a Proclamation was duly issued and published requiring the said to appear and give evidence at the time and place mentioned therein, and he has failed to appear;

This is to authorize and require you to attach by seizure the moveable property belonging to the said to the value of rupees which you may find within the district of and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of 18 .

(Seal.)

(Signature.)

ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE OF A PERSON ACCUSED.

(See section 88.)

To (*name and designation of the person or persons who is or are to execute the warrant*).

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*), and thereupon a Proclamation was duly issued and published requiring the said to appear to answer the said charge within days; and whereas the said is possessed of the following property other than land paying revenue to Government in the village (*or town*) of , in the district of *viz.*, and an order has been made for the attachment thereof;

You are hereby required to attach the said property by seizure, and to hold the same under attachment, pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of 18 .

(Seal)

(Signature.)

ORDER AUTHORISING AN ATTACHMENT BY THE DEPUTY COMMISSIONER AS
COLLECTOR.

(See section 88.)

To the Deputy Commissioner of the District of

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*), and thereupon a Proclamation was duly issued and published requiring the said to appear to answer the said charge within days, but he has not appeared; and whereas the said is possessed

Sched. V. of certain land paying revenue to Government in the village (or town) of _____
in the district of _____;

You are hereby authorized and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this _____ day of _____ 18 _____.

(Seal.)

(Signature.)

VII.—WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS.

(See section 90.)

To (name and designation of the Police-officer or other person or persons who is or are to execute the warrant).

WHEREAS complaint has been made before me that _____
of _____

has (or is suspected to have) committed the offence of (mention the offence concisely), and it appears likely that (name and description of witness) can give evidence concerning the said complaint; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so;

This is to authorize and require you to arrest the said (name), and on the _____ day of _____ to bring him before this Court to be examined touching the offence complained of.

Given under my hand and the seal of the Court this _____ day of _____ 18 _____.

(Seal.)

(Signature.)

VIII.—WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE.

(See section 96.)

To (name and designation of the Police-officer or other person or persons who is or are to execute the warrant).

WHEREAS information has been laid (or complaint has been made) before me of the commission (or suspected commission) of the offence of (mention the offence concisely), and it has been made to appear to me that the production of (specify the thing clearly) is essential to the inquiry now being made (or about to be made) into the said offence (or suspected offence);

This is to authorize and require you to search for the said (the thing specified) in the (describe the house or place, or part thereof, to which the search is to be confined), and, if found, to produce the same forthwith before this Court; returning this warrant with an endorsement certifying what you have done under it immediately upon its execution.

Given under my hand and the seal of the Court this _____ day of _____ 18 _____.

(Seal.)

(Signature.)

IX.—WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT.

(See section 98.)

To (name and designation of a Police-officer above the rank of a Constable).

WHEREAS information has been laid before me, and on due inquiry thereupon had I have been led to believe that the (describe the house or other place) is used as a place for the deposit (or sale) of stolen property (or, if for either of the other purposes expressed in the section, state the purpose in the words of the section);

This is to authorize and require you to enter the said house (or other place) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (or other place, or, if the search is to be confined to a part, specify the part clearly) and to seize and take possession of any property (or documents, or stamps, or seals, or coins, as the case may be) [Add (when the case requires it) and also of any instruments and materials

which you may reasonably believe to be kept for the manufacture of forged documents, or counterfeit stamps, or false seals, or counterfeit coin (*as the case may be*) and forthwith to bring before this Court such of the said things as may be taken possession of; returning this warrant with an endorsement certifying what you have done under it immediately upon its execution. Sched. V.

Given under my hand and the seal of the Court this day
of 18 . . .
(Seal.) (Signature.)

X.—BOND TO KEEP THE PEACE.

(See section 106.)

WHEREAS I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to keep the peace for the term of , I hereby bind myself not to commit a breach of the peace or do any act that may probably occasion a breach of the peace during the said term; and, in case of my making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of 18 . .
(Signature.)

XI.—BOND FOR GOOD BEHAVIOUR.

(See sections 109 and 110.)

WHEREAS I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects for the term of (*state the period*), I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term; and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees .

Dated this day of 18 . .
(Signature.)

(Where a bond with sureties is to be executed, add). We do hereby declare ourselves sureties for the abovenamed that he will be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects during the said term; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Her Majesty the sum of rupees .

Dated this day of 18 . .
(Signature.)

XII.—SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE.

(See Section 114.)

To of .

WHEREAS it has been made to appear to me by credible information that (*state the substance of the information*) and that you are likely to commit a breach of the peace (or by which act a breach of the peace will probably be occasioned), you are hereby required to attend in person (or by a duly authorized agent) at the Office of the Magistrate of on the day of 18 , at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees [when sureties are required, add and also to give security by the bond of one (or two, as the case may be) surety (or sureties) in the sum of rupees (each, if more than one)], that you will keep the peace for the term of .

Given under my hand and the seal of the Court this day
of 18 . .
(Seal.) (Signature.)

Sched. V. XIII.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE.

(See section 123.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS (name and address) appeared before me in person (or by his authorized agent) on the day of in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees with one surety (or a bond with two sureties each in rupees), that he the said (name) would keep the peace for the period of months; and whereas an order was then made requiring the said (name) to enter into and find such security (state the security ordered when it differs from that mentioned in the summons), and he has failed to comply with the said order;

This is to authorize and require you the said Superintendent (or Keeper) to receive the said (name) into your custody together with this warrant, and him safely to keep in the said jail for the said period of (term of imprisonment) unless he shall in the meantime comply with the said order by himself and his surety (or sureties) entering into the said bond, in which case the same shall be received, and the said (name) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this day of 18

(Seal.)

(Signature.)

XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR.

(See section 123.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS it has been made to appear to me that (name and description) has been and is lurking within the district of having no otsensible means of subsistence (or, and that he is unable to give any satisfactory account of himself);

or

WHEREAS evidence of the general character of (name and description) has been adduced before me and recorded, from which it appears that he is an habitual robber (or house-breaker, &c, as the case may be);

And whereas an order has been recorded stating the same and requiring the said (name) to furnish security for his good behaviour for the term of (state the period) by entering into a bond with one surety (or two or more sureties, as the case may be), himself for rupees, and the said surety (or each of the said sureties) for rupees, and the said (name) has failed to comply with the said order, and for such default has been adjudged imprisonment for (state the term) unless the said security be sooner furnished;

This is to authorize and require you the said Superintendent (or Keeper) to receive the said (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment), unless he shall in the meantime comply with the said order by himself and his surety (or sureties) entering into the said bond, in which case the same shall be received and the said (name) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this day of 18

(Seal.)

(Signature.)

XV.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(See sections 123 and 124.)

To the Superintendent (or Keeper) of the Jail at

(or other

officer in whose custody the person is).

WHEREAS (name and description of prisoner) was committed to your custody under warrant of this Court, dated the day of

and has since duly given security under section
Procedure,

of the Code of Criminal Sched. V.

or

and there have appeared to me sufficient grounds for the opinion that he can be
released without hazard to the community;

This is to authorize and require you forthwith to discharge the said (name)
from your custody, unless he is liable to be detained for some other cause.

Given under my hand and the seal of the Court this day
of 18 .

(Seal.)

(Signature.)

XVI.—ORDER FOR THE REMOVAL OF NUISANCES.

(See section 133.)

To (name, description and address).

WHEREAS it has been made to appear to me that you have caused an obstruction (or nuisance) to persons using the public roadway (or other public place), which, &c. (describe the road or public place), by, &c. (state what it is that causes the obstruction or nuisance), and that such obstruction (or nuisance) still exists;

or

WHEREAS it has been made to appear to me that you are carrying on as owner, or manager, the trade or occupation of (state the particular trade or occupation and the place where it is carried on), and that the same is injurious to the public health (or comfort) by reason (state briefly in what manner the injurious effects are caused), and should be suppressed or removed to a different place;

or

WHEREAS it has been made to appear to me that you are the owner (or are in possession of or have the control over) a certain tank (or well or excavation) adjacent to the public way (describe the thoroughfare), and that the safety of the public is endangered by reason of the said tank (or well or excavation) being without a fence (or insecurely fenced);

or

WHEREAS, &c., &c. (as the case may be);

I do hereby direct and require you within (state the time allowed) to (state what is required to be done to abate the nuisance) or to appear at
in the Court of on the day of next, and to
show cause why this order should not be enforced;

or

I do hereby direct and require you within (state the time allowed) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, &c.;

or

I do hereby direct and require you within (state the time allowed) to put up a sufficient fence (state the kind of fence and the part to be fenced), or to appear, &c.;

or

I do hereby direct and require you, &c., &c. (as the case may be).

Given under my hand and the seal of the Court this day
of 18 .

(Seal.)

(Signature.)

XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(See section 138.)

WHEREAS on the day of 18 , an order was issued to (name) requiring him (state the effect of the order), and whereas the said (name) has applied to me by a petition bearing date the day of for an order appointing a jury to try whether the said recited order is reasonable and proper; I do hereby appoint (the names, &c., of the five or more jurors) to be the jury to try and decide the said question, and do

Sched. V. require the said jury to report their decision within days from the date of
 this order at my office at
 Given under my hand and the seal of the Court this day
 of 18 .
 (Seal.) (Signature.)

**XVIII.—MAGISTRATE'S NOTICE AND PREEMPTORY ORDER AFTER THE FINDING
 BY A JURY.**

(See section 140.)

To (name, description and address).

I HEREBY give you notice that the jury duly appointed on the petition presented by you on the day of have found that the order issued on the day of requiring you (*state substantially the requisition in the order*) is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within (*state the time allowed*) on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court this day
 of 18 .
 (Seal.) (Signature.)

**XIX.—INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING INQUIRY
 BY JURY.**

(See section 142.)

To (name, description and address).

WHEREAS the inquiry by a jury appointed to try whether my order issued on the day of 18 is reasonable and proper, is still pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to (*state plainly what is required to be done as a temporary safeguard*), pending the result of the local inquiry by the jury.

Given under my hand and the seal of the Court this day
 of 18 .
 (Seal.) (Signature.)

XX.—MAGISTRATE'S ORDER PROHIBITING THE REPETITION, &c., OF A NUISANCE.

(See section 143.)

To (name, description and address).

WHEREAS it has been made to appear to me that, &c. (*state the proper recital, guided by Form No. XVI or Form No. XXI, as the case may be*);

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing or causing or permitting to be placed, &c. (*as the case may be*).

Given under my hand and the seal of the Court this day
 of 18 .
 (Seal.) (Signature.)

XXI.—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, &c.

(See section 144.)

To (name, description and address).

WHEREAS it has been made to appear to me that you are in possession (*or have the management*) of (*describe clearly the property*), and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

or

WHEREAS it has been made to appear to me that you and a number of other persons (*mention the class of persons*) are about to meet and proceed in a religious procession along the public street, &c. (*as the case may be*), and that such procession is likely to lead to a riot or an affray; Sched. V.

or
 WHEREAS, &c., &c. (*as the case may be*);

I do hereby order you not to place or permit to be placed any of the earth or stones dug from your land in any part of the said road;

or
 I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (*or, as the case recited may require*).

Given under my hand and the seal of the Court this day
 of 18 .
 (Seal.) (Signature.)

XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN
 POSSESSION OF LAND, &c., IN DISPUTE.
 (See section 145.)

It appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (*describe the parties by name and residence, or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (*name or names or description*) is true,

I do decide and declare that he is (*or they are*) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (*or their*) possession in the meantime.

Given under my hand and the seal of the Court this day
 of 18 .
 (Seal.) (Signature.)

XXIII.—WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE AS
 TO THE POSSESSION OF LAND, &c.
 (See section 146.)

To the Police-officer in charge of the Police-station at
 [or, To the Collector of].

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (*describe the parties concerned by name and residence, or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and whereas, upon due inquiry into the said claims, I have decided that neither of the said parties was in possession of the said (*the subject of dispute*) [or I am unable to satisfy myself as to which of the said parties was in possession as aforesaid];

This is to authorize and require you to attach the said (*the subject of dispute*) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession, shall have been obtained; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this day
 of 18 .
 (Seal.) (Signature.)

(See section 147.)

Given under my hand and the seal of the Court this _____ day
of _____ 18____.

(Seal.) _____ (Signature.) _____

(See section 169.)

Dated this day of 18 .
(Signature.)

(Signature.)

(See section 170.)

(Signature.)

XXVII.—NOTICE OF COMMITMENT BY MAGISTRATE TO GOVERNMENT
PLEADER.

Sched. V.

(See section 218.)

* The Magistrate of hereby gives notice that he has committed one for trial at the next Sessions; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case. The charge against the accused is that, &c. (*state the offence as in the charge*).
Dated this day of 18 .

(Signature.)

XXVIII.—CHARGES.

(See sections 221, 222, 223.)

(I).—CHARGES WITH ONE HEAD.

(a.) I, [*name and office of Magistrate, &c.*], hereby charge you [*name of accused person*] as follows:—

(b.) That you, on or about the day of

On Penal Code, sec at , waged war against Her Majesty the Queen, Empress of India, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session [*when the charge is framed by a Presidency Magistrate, for Court of Session substitute High Court*].

(c.) And I hereby direct that you be tried by the said Court on the said charge.

[Signature and seal of the Magistrate.]

[To be substituted for (b):—]

(2.) That you, on or about the day of , at , with

On section 124. the intention of inducing the Honourable A. B., Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(3.) That you, being a public servant in the Department, directly

On section 161. accepted from [*state the name*], for another party [*state the name*], a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(4.) That you, on or about the day of , at , did

On section 166. [or omitted to do, as the case may be] such conduct being contrary to the provisions of Act , section , and known by you to be prejudicial to and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(5.) That you, on or about the day of , at ,

On section 193. in the course of the trial of , before , stated in evidence that “ ” which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(6.) That you, on or about the day of , at ,

On section 304. committed culpable homicide not amounting to murder, causing the death of , and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(7.) That you, on or about the day of , at , abetted

On section 306. the commission of suicide by A. B., a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

Sched. V. (8.) That you, on or about the day of , at ,
On section 325, voluntarily caused grievous hurt to , and
thereby committed an offence punishable under section 325
of the Indian Penal Code, and within the cognizance of the Court of Session [or
High Court].

(9.) That you, on or about the day of , at ,
On section 392, robbed [state the name] and thereby committed an offence
punishable under section 392 of the Indian Penal Code,
and within the cognizance of the Court of Session [or High Court].

(10.) That you, on or about the day of , at ,
On section 395, committed dacoity, an offence punishable under section 395
of the Indian Penal Code, and within the cognizance of
the Court of Session [or High Court].

[In cases tried by Magistrates, substitute "within my cognizance" for "within
the cognizance of the Court of Session," and in (c) omit "by the said Court."]

(II).—CHARGES WITH TWO OR MORE HEADS.

(a.) I, [name and office of Magistrate, &c.], hereby charge you [name of
accused person] as follows:—

(b.) *First.*—That you, on or about the day of ,
On section 211, at , knowing a coin to be counterfeit, delivered
the same to another person, by name A. B., as genuine,
and thereby committed an offence punishable under section 241 of the Indian
Penal Code, and within the cognizance of the Court of Session [or High Court].

Secondly.—That you, on or about the day of ,
at , knowing a coin to be counterfeit, attempted to induce another
person, by name A. B., to receive it as genuine, and thereby committed an offence
punishable under section 241 of the Indian Penal Code, and within the cognizance
of the Court of Session [or High Court].

(c.) And I hereby direct that you be tried by the said Court on the said
charge.

[Signature and seal of the Magistrate.]

[To be substituted for (b):—]

(2.) *First.*—That you, on or about the day of ,
On sections 302 and 304, at , committed murder by causing the death
of , and thereby
committed an offence punishable under section 302 of the Indian Penal Code,
and within the cognizance of the Court of Session [or High Court].

Secondly.—That you, on or about the day of , at ,
by causing the death of , committed cul-
pable homicide not amounting to murder, and thereby committed an offence
punishable under section 304 of the Indian Penal Code, and within the cognizance
of the Court of Session [or High Court].

(3.) *First.*—That you, on or about the day of ,
On sections 379 and 404, at , committed theft, and thereby committed
382. an offence punishable under section 379 of the Indian
Penal Code, and within the cognizance of the Court of Session [or High Court].

Secondly.—That you, on or about the day of , at ,
committed theft, having made preparation for causing death to a person
in order to the committing of such theft, and thereby committed an offence punish-
able under section 382 of the Indian Penal Code, and within the cognizance of
the Court of Session [or High Court].

Thirdly.—That you, on or about the day of , at ,
committed theft, having made preparation for causing restraint to a person
in order to the effecting of your escape after the committing of such theft, and
thereby committed an offence punishable under section 382 of the Indian Penal
Code, and within the cognizance of the Court of Session [or High Court].

Fourthly.—That you, on or about the day of , at ,
committed theft, having made preparation for causing fear of hurt to a person in
order to the retaining of property taken by such theft, and thereby committed an
offence punishable under section 382 of the Indian Penal Code, and within the
cognizance of the Court of Session [or High Court].

(4.) That you, on or about the _____ day of _____, at _____, Sched. V.
 Alternative charges on _____ in the course of the inquiry into
 section 193. _____ before _____, stated in evidence that "
 and that you, on or about the _____ day of _____, at _____,
 in the course of the trial of _____, before _____, stated in
 evidence that "_____" one of which statements you either
 knew or believed to be false, or did not believe to be true, and thereby com-
 mitted an offence punishable under section 193 of the Indian Penal Code, and
 within the cognizance of the Court of Session [or High Court].
 [In cases tried by Magistrates, substitute "within my cognizance" for "within
 the cognizance of the Court of Session," and in (c) omit "by the said Court."]

(III).—CHARGE FOR THEFT AFTER A PREVIOUS CONVICTION.

I (name and office of Magistrate, &c.) hereby charge you (name of accused person) as follows :—

That you, on or about the _____ day of _____, at _____, committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code and within the cognizance of the Court of Session [or {High Court,} {Magistrate,} as the case may be].

And you the said (name of accused) stand further charged that you, before the committing of the said offence, that is to say, on the _____ day of _____, had been convicted by the (state Court by which conviction was had) at _____ of an offence punishable under Chapter XVII of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night (describe the offence in the words used in the section under which the accused was convicted), which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code.

And I hereby direct that you be tried, &c.

XXIX.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(See sections 245 and 258.)

To the Superintendent (or Keeper) of the Jail at _____
 WHEREAS on the _____ day of _____ 18 (name of prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. _____ of the Calendar for 18 _____, was convicted before me (name and official designation) of the offence of (mention the offence or offences concisely) under section (or sections) of the Indian Penal Code (or of Act _____), and was sentenced to (state the punishment fully and distinctly);

This is to authorize and require you, the said Superintendent (or Keeper) to receive the said (prisoner's name) into your custody in the said jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court this _____ day of _____ 18 _____
 (Seal.) (Signature.)

XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY DISTRESS.

(See section 250.)

To the Superintendent (or Keeper) of the Jail at _____
 WHEREAS (name and description) has brought against (name and description of the accused person) the complaint that (mention it concisely), and the same has been dismissed as frivolous (or vexatious), and the order of dismissal awards payment by the said (name of complainant) of the sum of rupees _____ as amends; and

Sched. V. whereas the said sum has not been paid and cannot be recovered by distress of the moveable property of the said (*name of complainant*) and an order has been made for his simple imprisonment in jail for the period of _____ days, unless the aforesaid sum be sooner paid;

This is to authorize and require you, the said Superintendent (*or Keeper*), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), subject to the provisions of section 69 of the Indian Penal Code, unless the said sum be sooner paid, and on the receipt thereof forthwith to set him at liberty; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this _____ day
of _____ 18 _____
(*Seal.*) (Signature.)

XXXI.—SUMMONS TO A WITNESS.

(*See sections 68 and 252.*)

To _____ of _____
WHEREAS complaint has been made before me that _____
of _____ has (*or is suspected to have*) committed the offence of (*state the offence concisely, with time and place*), and it appears to me that you are likely to give material evidence for the prosecution;

You are hereby summoned to appear before this Court on the _____ day of _____ next at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court this _____ day
of _____ 18 _____
(*Seal.*) (Signature.)

XXXII.—PRECEPT TO DISTRICT MAGISTRATE TO SUMMON JURORS AND ASSESSORS.

(*See section 326.*)

To the District Magistrate of _____

WHEREAS a Criminal Session is appointed to be held in the Court-house at _____ on the _____ day of _____ next, and the names of the persons herein stated have been duly drawn by lot from among those named in the revised list of jurors and assessors furnished to this Court; you are hereby required to summon the said persons to attend at the said Court of Session at 10 A.M. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

(*Here enter the names of Jurors and Assessors.*)

Given under my hand and the seal of the Court this _____ day
of _____ 18 _____
(*Seal.*) (Signature.)

XXXIII.—SUMMONS TO ASSESSOR OR JUROR.

(*See section 328.*)

To (*name*), of (*place*).

PURSUANT to a precept directed to me by the Court of Session of _____ requiring your attendance as an assessor (*or a juror*) at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at (*place*) at ten o'clock in the forenoon on the _____ day of _____ next.

Given under my hand and seal of office this _____ day of _____ 18 _____
(*Seal.*) (Signature.)

XXXIV.—WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH.

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(See section 374.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS at the Session held before me on the _____ day of _____ 18 (name of prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. _____ of the Calendar at the said Session was duly convicted of the offence of culpable homicide amounting to murder under section _____ of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the _____ Court of _____;

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (prisoner's name) into your custody in the said jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court this _____ day of _____ 18 .
(Seal.) (Signature.)

XXXV.—WARRANT OF EXECUTION ON A SENTENCE OF DEATH.

(See section 381.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS (name of prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. _____ of the Calendar at the Session held before me on the _____ day of _____ 18 , has been by a warrant of this Court, dated the _____ day of _____ , committed to your custody under sentence of death, and whereas the order of the _____ Court of _____ confirming the said sentence has been received by this Court;

This is to authorize and require you, the said Superintendent (or Keeper), to carry the said sentence into execution by causing the said _____ to be hanged by the neck until he be dead, at (time and place of execution), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court this _____ day of _____ 18 .
(Seal.) (Signature.)

XXXVI.—WARRANT AFTER A COMMUTATION OF A SENTENCE.

(See sections 381 and 382.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS at a Session held on the _____ day of _____ 18 (name of prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. _____ of the Calendar at the said Session, was convicted of the offence of _____ , punishable under section _____ of the Indian Penal Code, and sentenced to _____ , and was thereupon committed to your custody; and whereas by the order of the _____ Court of _____ (a duplicate of which is hereunto annexed), the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life (or, as the case may be);

This is to authorize and require you, the said Superintendent (or Keeper), safely to keep the said (prisoner's name) in your custody in the said jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order,

or

if the mitigated sentence is one of imprisonment, say, after the words " custody in the said jail," " and there to carry into execution the punishment of imprisonment under the said order according to law."

Given under my hand and the seal of the Court this _____ day of _____ 18 .
(Seal.) (Signature.)

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XXXVII.—WARRANT TO LEVY A FINE BY DISTRESS AND SALE.

(See section 386.)

To (name and designation of the police-officer or other person or persons who is or are to execute the warrant).

WHEREAS (name and description of the offender) was, on the day of 18, convicted before me of the offence of (mention the offence concisely) and sentenced to pay a fine of rupees, and whereas the said (name), although required to pay the said fine, has not paid the same or any part thereof;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (name), which may be found within the district of; and, if within (state the number of days or hours allowed) next after such distress the said sum shall not be paid (or forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said fine; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court this day of 18.
(Seal.) (Signature.)

XXXVIII.—WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT WHEN A FINE IS IMPOSED.

(See section 480.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS at a Court holden before me on this day (name and description of the offender) in the presence (or view) of the Court committed wilful contempt;

And whereas for such contempt the said (name of offender) has been adjudged by the Court to pay a fine of rupees, or in default to suffer simple imprisonment for the space of (state the number of months or days);

This is to authorize and require you, the Superintendent (or Keeper) of the said Jail, to receive the said (name of offender) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (term of imprisonment), unless the said fine be sooner paid; and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this day of 18.
(Seal.) (Signature.)

XXXIX.—MAGISTRATE'S OR JUDGE'S WARRANT OF COMMITMENT OF WITNESS REFUSING TO ANSWER.

(See section 485.)

To (name and designation of officer of Court).

WHEREAS (name and description), being summoned (or brought before this Court) as a witness and this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question (or certain questions) put to him touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (term of detention adjudged);

This is to authorize and require you to take the said (name) into custody, and him safely keep in your custody for the space of days, unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this day of 18.
(Seal.) (Signature.)

XL.—WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE.

Sched. V.

(See section 488.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS, (name, description and address) has been proved before me to be possessed of sufficient means to maintain his wife (name) [or his child (name)], who is by reason of (state the reason) unable to maintain herself (or himself)] and to have neglected (or refused) to do so, and an order has been duly made requiring the said (name) to allow to his said wife (or child) for maintenance the monthly sum of rupees ; and whereas it has been further proved that the said (name) in wilful disregard of the said order has failed to pay rupees being the amount of the allowance for the month (or months) of : And thereupon an order was made adjudging him to undergo simple (or rigorous) imprisonment in the said jail for the period of ;

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (name) into your custody in the said jail, together with this warrant, and there carry the said order into execution according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this day of 18

(Seal.)

(Signature.)

XLI.—WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY DISTRESS AND SALE.

(See section 488.)

To (name and designation of the Police-officer or other person to execute the warrant).

WHEREAS an order has been duly made requiring (name) to allow to his said wife (or child) for maintenance the monthly sum of rupees , and whereas the said (name) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (or months) of ;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (name) which may be found within the district of , and if within (state the number of days or hours allowed) next after such distress the said sum shall not be paid (or forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said sum; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court this day of 18

(Seal.)

(Signature.)

XLII.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A MAGISTRATE.

(See sections 496 and 499.)

I, (name), of (place), being brought before the Magistrate of (as the case may be) charged with the offence of , and required to give security for my attendance in his Court and at the Court of Session, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge, and should the case be sent for trial by the Court of Session, to be, and appear, before the said Court when called upon to answer the charge against me; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of 18

(Signature.)

I hereby declare myself (or we jointly and severally declare ourselves and each of us) surety (or sureties) for the said (name) that he shall attend at the Court of on every day of the preliminary inquiry into the offence charged against him, and, should the case be sent for trial by the Court of Session, that he

Sched. V. shall be, and appear, before the said Court to answer the charge against him, and in case of his making default therein, I bind myself (or we bind ourselves) to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .
 Dated this day of 18 .

(Signature.)

XLIII.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SURETY.

(See section 500.)

To the Superintendent (or Keeper) of the Jail at

(or other officer in whose custody the person is).

WHEREAS (name and description of prisoner) was committed to your custody under warrant of this Court, dated the day of , and has since with his surety (or sureties) duly executed a bond under section 499 of the Code of Criminal Procedure;

This is to authorize and require you forthwith to discharge the said (name) from your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Court this day of 18 .

(Signature.)

XLIV.—WARRANT OF ATTACHMENT TO ENFORCE A BOND.

(See section 514.)

To the Police-officer in charge of the Police-station at

WHEREAS (name, description and address of person) has failed to appear on (mention the occasion) pursuant to his recognizance, and has by such default forfeited to Her Majesty the Queen, Empress of India, the sum of rupees (the penalty in the bond); and whereas the said (name of person) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him;

This is to authorize and require you to attach any moveable property of the said (name) that you may find within the district of , by seizure and detention, and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court this day of 18 .

(Seal.)

(Signature.)

XLV.—NOTICE TO SURETY ON BREACH OF A BOND.

(See section 514.)

To of 18 .
 WHEREAS on the day of 18 you became surety for (name), of (place), that he should appear before this Court on the day , and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Queen, Empress of India; and whereas the said (name) has failed to appear before this Court, and by reason of such default you have forfeited the aforesaid sum of rupees ;

You are hereby required to pay the said penalty, or show cause, within days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court this day of 18 .

(Seal.)

(Signature.)

XLVI.—NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

Sched. V.

(See section 514.)

To _____ of _____
WHEREAS on the _____ day of _____ 18____ you became surety by a bond for (name), of (place), that he would be of good behaviour for the period of _____, and bound yourself in default thereof to forfeit the sum of rupees _____ to Her Majesty the Queen, Empress of India; and whereas the said (name) has been convicted of the offence of (*mention the offence concisely*) committed since you became such surety, whereby your security-bond has become forfeited;
 You are hereby required to pay the said penalty of rupees _____, or to show cause, within _____ days, why it should not be paid.
 Given under my hand and the seal of the Court this _____ day of _____ 18____.
 (Seal.) (Signature.)

XLVII.—WARRANT OF ATTACHMENT AGAINST A SURETY.

(See section 514.)

To _____
WHEREAS (name, description and address) has bound himself as surety for the appearance of (mention the condition of the bond), and the said (name) has made default, and thereby forfeited to Her Majesty the Queen, Empress of India, the sum of rupees _____ (*the penalty in the bond*);
 This is to authorize and require you to attach any moveable property of the said (name) which you may find within the district of _____, by seizure and detention; and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.
 Given under my hand and the seal of the Court this _____ day of _____ 18____.
 (Seal.) (Signature.)

XLVIII.—WARRANT OF COMMITMENT OF THE SURETY OF AN ACCUSED PERSON ADMITTED TO BAIL.

(See section 514.)

To the Superintendent (or Keeper) of the Civil Jail at _____
WHEREAS (name and description of surety) has bound himself as a surety for the appearance of _____ (*state the condition of the bond*), and the said (name) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Queen, Empress of India; and whereas the said (name of surety) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his imprisonment in the civil jail for (*specify the period*);
 This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (name) into your custody with this warrant and him safely to keep in the said jail for the said (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.
 Given under my hand and the seal of the Court this _____ day of _____ 18____.
 (Seal.) (Signature.)

Sched. V.

**XLIX.—NOTICE TO THE PRINCIPAL OF FORFEITURE OF A BOND
TO KEEP THE PEACE.**

(See section 514.)

To *(name, description and address)*.

WHEREAS, on the day of 18 , you entered into a bond not to commit, &c. *(as in the bond)*, and proof of the forfeiture of the same has been given before me and duly recorded ;

You are hereby called upon to pay the said penalty of rupees , or to show cause before me within days why payment of the same should not be enforced against you.

Dated this day of 18 .

(Seal.)

(Signature.)

**L.—WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH
OF A BOND TO KEEP THE PEACE.**

(See section 514.)

To *(name and designation of Police-officer)* at the Police-station of .

WHEREAS *(name and description)* did, on the day of 18 , enter into a bond for the sum of rupees binding himself not to commit a breach of the peace, &c. *(as in the bond)*, and proof of the forfeiture of the said bond has been given before me and duly recorded, and whereas notice has been given to the said *(name)*, calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum ;

This is to authorize and require you to attach by seizure moveable property belonging to the said *(name)* to the value of rupees which you may find within the district of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realize the same ; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court this day of 18 .

(Seal.)

(Signature.)

**LI.—WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP
THE PEACE.**

(See section 514.)

To the Superintendent *(or Keeper)* of the Civil Jail at .

WHEREAS proof has been given before me and duly recorded that *(name and description)* has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees ; and whereas the said *(name)* has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said *(name)* in the civil jail for the period of *(term of imprisonment)* ;

This is to authorize and require you, the said Superintendent *(or Keeper)* of the said Civil Jail, to receive the said *(name)* into your custody, together with this warrant, and him safely to keep in the said jail for the said period of *(term of imprisonment)* ; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this day of 18 .

(Seal.)

(Signature.)

LII.—WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF
BOND FOR GOOD BEHAVIOUR.

Sched. V.

(See section 514.)

To the Police-officer in charge of the Police-station at

WHEREAS (name, description and address) did, on the day
of 18 , give security by bond in the sum of rupees
for the good behaviour of (name, &c., of the principal), and proof has been given
before me and duly recorded of the commission by the said (name) of the offence
of , whereby the said bond has been forfeited ; and whereas notice has
been given to the said (name), calling upon him to show cause why the said sum
should not be paid, and he has failed to do so or to pay the said sum ;

This is to authorize and require you to attach by seizure moveable property
belonging to the said (name) to the value of rupees which you
may find within the district of , and, if the said sum
be not paid within , to sell the property so attached, or so much
of it as may be sufficient to realize the same, and to make return of what you
have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court this day
of 18 .

(Seal.)

(Signature.)

LIII.—WARRANT OF IMPRISONMENT ON FORFEITURE OF BOND FOR
GOOD BEHAVIOUR.

(See section 514.)

To the Superintendent (or Keeper) of the Civil Jail at

WHEREAS (name, description and address) did, on the day
of 18 , give security by bond in the sum of rupees
for the good behaviour of (name, &c., of the principal), and proof of the breach
of the said bond has been given before me and duly recorded, whereby the said
(name) has forfeited to Her Majesty the Queen, Empress of India, the sum of
rupees ; and whereas he has failed to pay the said sum or
to show cause why the said sum should not be paid although duly called upon to
do so, and payment thereof cannot be enforced by attachment of his moveable
property, and an order has been made for the imprisonment of the said (name) in
the civil jail for the period of (term of imprisonment) ;

This is to authorize and require you, the said Superintendent (or Keeper), to
receive the said (name) into your custody, together with this warrant, and him safe-
ly to keep in the said jail for the said period of (term of imprisonment), returning
this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this day
of 18 .

(Seal.)

(Signature.)

APPENDIX.

ACT NO. III OF 1884.

An Act to amend the Code of Criminal Procedure, 1882. (Received the assent of the Governor General on the 25th January, 1884.)

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1882; It is hereby enacted as follows :—

Amendment of section 25. 1. In section 25, after the words “ British India ” the following shall be inserted :—

“ Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving.”

Addition to section 191. 2. To section 191 the following shall be added, namely :—

“ When a Magistrate takes cognizance of an offence under clause (c), the accused, or, when there are several persons accused, any one of them, shall be entitled to require that the case shall, instead of being tried by such Magistrate, be either transferred to another Magistrate or committed to the Court of Session.”

Amendment of section 443. 3. In section 443, before the words “ Presidency Magistrate ” the words “ District Magistrate or ” shall be inserted.

Amendment of section 444. 4. In section 444, after the words “ Court of Session ” the words “ except the Sessions Judge ” shall be inserted.

Amendment of section 446. 5. (1) In section 446, before the words “ Presidency Magistrate ” the words “ District Magistrate or ” shall be inserted.

(2) To the same section the following shall be added, namely :—

“ and a District Magistrate shall not pass any such sentence other than imprisonment for a term which may extend to six months, or fine which may extend to two thousand rupees, or both.”

Repeal of section 450. 6. Section 450 is hereby repealed.

New section substituted for section 451. 7. For section 451 the following shall be substituted :—

“ 451. (1) In trials of European British subjects before a High Court or Court of Session, if, before the first juror is called and accepted, or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, the trial shall be by a jury of which not less than half the number shall be Europeans or Americans or both Europeans and Americans.

“ (2) When any such trial before a Court of Session would in the ordinary course be with the aid of assessors, the European British subject accused, or, where there are several European British subjects accused, all of them jointly, may, instead of claiming to be tried by a mixed jury under sub-section (1), require that not less than half the number of the assessors shall be Europeans or Americans or both Europeans and Americans.”

New sections to follow section 451.

8. After section 451 the following shall be inserted, namely :—

451A. (1) In trials of European British subjects before a District Magistrate, any such subject may, in a summons case before he is heard in his defence under section 244, or in a warrant case before he enters on his defence under section 256, claim that the trial shall be by a jury composed in manner prescribed by section 451.

"(2) If a claim is made under sub-section (1) in a summons case at the time when the magistrate proceeds under section 244 to hear the accused, or in a warrant case at the time when the Magistrate calls upon the accused under section 256 to enter upon the defence, the Magistrate shall forthwith issue the necessary orders for the trial by a jury as aforesaid.

"(3) If such a claim is made at an earlier stage of the proceedings, the Magistrate shall issue such orders whenever it appears to him from the evidence recorded that there will be a sufficient case to go before a jury.

"(4) In every such case the Magistrate shall, notwithstanding anything contained in section 242, before issuing any orders as aforesaid, frame a formal charge.

"(5) The provisions of sections 211, 216, 217, 219 and 220 shall, so far as may be, apply for the purpose of securing the attendance of the complainant, the accused and the witnesses at every trial to be held under this section.

"(6) The provisions of this Code relating to the procedure in a trial by jury before a Court of Session shall, as nearly as may be, apply to every trial under this section as if the District Magistrate were a Sessions Judge and the accused had been committed to his Court for trial.

"(7) All Courts may construe any of the provisions referred to in sub-section (5) or sub-section (6), in so far as they are made applicable by that sub-section, with such verbal alterations not affecting the substance as may be necessary or proper to adapt the same to the matter before them.

"(8) Nothing in this section shall affect the power of the Magistrate to commit an accused person for trial under section 347 or section 447."

451B. (1) If an accused person claims to be tried by jury under section 451A, and in the opinion of the District Magistrate there is reason to believe that a jury composed in manner prescribed by section 451 cannot be constituted for the trial before himself, or cannot be so constituted without an amount of delay, expense or inconvenience which under the circumstances of the case would be unreasonable, he may, instead of issuing orders for the trial before himself under section 451A, transfer the case for trial to such other District Magistrate or to such Sessions Judge as the High Court may, from time to time, by rules made by it in this behalf and approved by the Local Government, or by special order, direct.

"(2) When a case is transferred under this section to a Sessions Judge or District Magistrate, he shall with all convenient speed try it with the same powers (including the power of commitment) and according to the same procedure as if he were a District Magistrate acting under section 451A."

9. The last sixteen words of section 459 are hereby repealed; and in the same section, after the words "any Magistrate" the words "or any Judge presiding in a Court of Session" shall be inserted.

Amendment of section 459. 10. In section 462, after the figures "460" the following shall be inserted, namely :— "or before the Court of a District Magistrate or Sessions Judge proceeding under section 451A or 451B."

Amendment of section 526. 11. In section 526, after clause (d), the following shall be inserted, namely :—

"or

"(e) that such an order is expedient for the ends of justice."

"(2) In the same section, after clause (3), the following shall be inserted, namely :—

"or

"(4) that an accused person be committed for trial to itself or to a Court of Session."

New section inserted after section 526.

12. After section 526 the following section shall be inserted, namely :—

“526A. If in any criminal case or appeal, before the commencement of the hearing, the public prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending his intention to make an application under section 526 in respect of the case, the Court shall exercise the powers of postponement or adjournment given by section 344 in such a manner as will afford a reasonable time for the application being made and an order being obtained thereon, before the accused is called on for his defence, or, in the case of an appeal, before the hearing of the appeal.”

Addition to section 528. 13. To section 528 the following shall be added, namely :—

“A Magistrate making an order under this section shall record in writing his reason for making the same.”

Construction.

14. (1) In this Act, “section” means section of the Code of Criminal Procedure, 1882.

(2) All references to that Code made in enactments heretofore passed or hereafter to be passed shall be read as if made to that Code as amended by this Act.

Short title and commencement.

15. This Act may be called the Criminal Procedure Code Amendment Act, 1884; and it shall come into force on the first day of May, 1884.

ACT No. X OF 1886.

*An Act to amend the Code of Criminal Procedure, 1882, and certain other Acts.
(Received the assent of the Governor General on the 12th March, 1886.)*

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1882, and certain other Acts; It is hereby enacted as follows :—

1. In the last paragraph of section 31 of the Code of Criminal Procedure, 1882, for the words “any sentence of imprisonment for a term exceeding three years” the words “any sentence of imprisonment for a term exceeding four years, and any sentence of transportation,” shall be substituted.

Amendment of section 31 of the Code of Criminal Procedure.

2. For section 34 of the same Code the following shall be substituted, namely :—

“34. The Court of a District Magistrate, specially empowered under section 30, may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding four years, and any sentence of transportation, shall be subject to confirmation by the Sessions Judge.”

Substitution of new section for section 34.

3. After section 55 of the same Code, and after section 56 thereof, the following shall be added, namely :—

“This section applies to the police in the towns of Calcutta and Bombay.”

Addition to section 55 and section 56.

4. In sections 88 and 514 of the same Code, after the words “District Magistrate” the words “or Chief Presidency Magistrate” shall be inserted.

5. In section 110 of the same Code, for the words “Sub-Divisional Magistrate or Magistrate of the first class specially empowered in this behalf by the Local Government,” the words “or Sub-Divisional Magistrate, or a Magistrate of the first class specially empowered in this behalf by the Local Government” shall be substituted.

Amendment of sections 88 and 514.

Amendment of section 110.

Amendment of section 162.

6. In section 162 of the same Code the word "shall" shall be inserted before the words "be used."

Amendment of section 178.

7. In section 173 of the same Code, the following shall be substituted for the second paragraph, namely :—

"Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Local Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation."

Amendment of section 269.

8. In section 266 of the same Code, for the word and figures "section 307" the words and figures "sections 276 and 307" shall be substituted.

Amendment of section 269.

9. For the second paragraph of section 269 of the same Code the following shall be substituted, namely :—

"When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and by the Court of Session, with the aid of the jurors as assessors, for such of them as are not triable by jury."

Substitution of new section for section 398.

10. For section 398 of the same Code the following shall be substituted, namely :—

"398. (1) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

Provisions supplemental to sections 35, 396 and 397.

"(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or to a sentence of transportation or penal servitude for an offence punishable with imprisonment, and the person undergoing the sentence is after its execution to undergo a further substantive sentence, or further substantive sentences, of imprisonment, transportation or penal servitude, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences."

Amendment of section 401.

11. (1) For the third paragraph of section 401 of the same Code the following shall be substituted, namely :—

"If any condition on which a sentence has been suspended or remitted is, in the opinion of the Governor General in Council or of the Local Government, as the case may be, not fulfilled, the Governor General in Council or the Local Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence."

(2) After the third paragraph of the same section the following shall be inserted, namely :—

"The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will."

New sections to follow section 475.

12. After section 475 of the same Code the following sections shall be inserted, namely :—

Power of Governor General in Council to order criminal lunatics confined by order of Local Government to be removed from one province to another.

"475A. The Governor General in Council may direct that any person whom the Local Government has ordered under this chapter to be confined in a lunatic asylum, jail or other place of safe custody, shall be removed from the place where he is confined to any lunatic asylum, jail or other place of safe custody in British India.

" 475B. The Local Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or section 471 to discharge all or any of the functions of the Inspector General of Prisons under section 472, section 473 or section 474."

Amendment of section 495.

13. (1) For the first sentence of section 495 of the same Code the following shall be substituted, namely :—

" Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below a rank to be prescribed by the Local Government in this behalf with the previous sanction of the Governor General in Council."

(2) After the last sentence of the same section the following shall be added, namely :—

" An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted."

14. In section 510 of the same Code, for the word "the" before the words "Chemical Examiner" where those words first occur, the word "any" shall be substituted.

Amendment of section 510.

New section to follow section 541.

15. After section 541 of the same Code the following shall be inserted, namely :—

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail.

" 541A. (1) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

" (2) When a person is removed to a criminal jail under sub-section (1), he shall, on being released therefrom, be sent back to the civil jail, unless either—

" (a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure; or

" (b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure."

Addition of new section after section 558.

16. After section 558 of the same Code the following section shall be added, namely :—

Officers concerned in sales not to purchase or bid for property.

" 559. A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property."

Correction of omission in Schedule II.

17. In Schedule II of the same Code, between the two lines of entries against section 211 of the Indian Penal Code, the following shall be inserted, namely :—

| Column 2. | Column 3. | Column 4. | Column 5. | Column 6. | Column 7. | Column 8. |
|--|-----------|-----------|-----------|-----------|--|--|
| "If offence charged be punishable with imprisonment for seven years. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for seven years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class." |

APPENDIX.

Further amendment of
Schedule II.

18. In the same schedule, for section 225A and the line of entries against that section, the following shall be substituted, namely:—

| Column 1. | Column 2. | Column 3. | Column 4. | Column 5. | Column 6. | Column 7. | Column 8. |
|-----------|--|-----------------------------------|-----------|-----------|-----------|---|---|
| "225A | Omission to apprehend, or sufferance of escape, on part of public servant in cases not otherwise provided for— (a) in case of intentional omission or sufferance; (b) in case of negligent omission or sufferance. | Shall not arrest without warrant. | Ditto ... | Bailable | Ditto ... | Imprisonment of either description for three years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | | Ditto ... | Summons. | Ditto ... | Ditto ... | Simple imprisonment for two years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| "225B | Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for. | May arrest without warrant. | Warrant | Ditto ... | Ditto ... | Imprisonment of either description for six months, or fine, or both. | Ditto." |

Correction of omission in Schedule III.

19. In the part of Schedule III of the same Code entitled "*IV.—Ordinary Powers of a Sub-divisional Magistrate*," the following shall be inserted after the second article, namely:—

"(2A) Power to require security for good behaviour, section 110."

Bombay District Police Act, 1867.

Amendment of Bombay District Police Act.

20. The last nine words of section 23 of the Bombay District Police Act, 1867, are hereby repealed.

Indian Penal Code.

Amendment of sections 40 and 64 of the Indian Penal Code. *

21. (1) In the second clause of section 40 of the Indian Penal Code, between the figures "66" and "71" the figures "67" shall be inserted.

(2) In the second clause of section 64 of the same Code, after the word "punishable" the words "with imprisonment or fine, or" shall be inserted.

(A. H., C. P. C.)

Amendment of section 75 of the Indian Penal Code.

22. In section 75 of the same Code, for the words "or to double the amount of punishment" to the end of the section, the following shall be substituted, namely:—

"or to imprisonment of either description for a term which may extend to ten years."

Addition to section 216 of the Indian Penal Code.

23. After the first paragraph of section 216 of the same Code the following shall be inserted, namely:—

"'Offence' in this section includes also any act or omission of which a person is alleged to have been guilty out of British India which, if he had been guilty of it in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India."

Substitution of new sections for section 225A of the Indian Penal Code, and repeal of section 651 of the Code of Civil Procedure.

24. (1) For section 225A of the same Code the following sections shall be substituted, namely:—

"225A. Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

Omission to apprehend, sufferance of escape, on part of public servant in cases not otherwise provided for.

"(a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and

"(b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

"225B. Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.

(2) Section 651 of the Code of Civil Procedure is hereby repealed.

Prisoners' Act, 1871.

Substitution of new sections for sections 30, 31 and 32 of the Prisoners' Act.

For sections 30, 31 and 32 of the Prisoners' Act, 1871, the following shall be substituted, namely:—

"30. When any person is, or has been, sentenced to imprisonment by any Court, or, in default of giving security for keeping the peace or maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1882, the Local Government, or (subject to its orders and under its control) the Inspector General of Prisons, may order his removal during the period for which he has been sentenced to imprisonment or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of imprisonment within the territories subject to the same Local Government.

Removal from one jail to another in territories under same Local Government.

"31. (1) Whenever it appears to the Local Government that any person detained or imprisoned under any order or sentence of any Magistrate or Court is of unsound mind, that Government, by a warrant setting forth the grounds of belief that the person is of unsound mind, may order his removal to a lunatic asylum or other place of safe custody within the territories subject to the same Local Government, there to be kept and treated as the Local Government directs during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned, or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged according to law.

"(2) When it appears to the Local Government that the prisoner has become of sound mind, that Government by a warrant directed to the person having charge of the prisoner, shall, if the prisoner is still liable to be kept in custody, remand him to the prison from which he was removed or to another prison within the territories subject to the same Local Government, or, if the prisoner is no longer liable to be kept in custody, order him to be discharged.

"(3) The provisions of section 9 of Act XXXVI of 1858 (*relating to Lunatic Asylums*) shall apply to every person confined in a lunatic asylum under sub-section (1) after the expiration of the term for which he was ordered or sentenced to be detained or imprisoned; and the time during which a prisoner is confined in a lunatic asylum under that sub-section shall be reckoned as part of the term of detention or imprisonment which he may have been ordered or sentenced by the Magistrate or Court to undergo.

"(4) In any case in which a Local Government is competent under sub-section (1) to order the removal of a prisoner to a lunatic asylum or other place of safe custody within the territories subject to the same Local Government, the Governor General in Council may order his removal to any lunatic asylum or other place of safe custody in any part of British India; and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed by order of a Local Government shall, so far as they can be made applicable, apply to a prisoner removed by order of the Governor General in Council.

"32. When any person is, or has been, sentenced to imprisonment by any Court, or, in default of giving security for maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1882, the Governor General in Council may order his removal during the period for which he has been sentenced to imprisonment or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of imprisonment in British India."

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(A. M., G. P. C.)

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